

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

In re: Novant Health, Inc.

LEAD Case No. 1:22-cv-00697
Consolidated with: 1:22-cv-
00700-WO-JEP; 1:22-cv-00709-
WO-JEP, and 1:22-cv-00799-
WO-JEP

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR AN AWARD
OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND
SERVICE AWARDS TO CLASS REPRESENTATIVES**

Pursuant to Fed. R. Civ. P. 23(h) and this Court's Preliminary Approval Order (ECF No. 33), Plaintiffs seek approval of the requested attorneys' fees, expense, and service award as described in the Settlement Agreement ("S.A.").

I. BACKGROUND

A. History

This matter arose after a letter from Novant Health, Inc. ("Defendant" or "Novant"), dated on or about August 12, 2022, notified Plaintiffs Kevin Curry, Keith David Allen, Karyn Cook, Daymond Cox, Meghan Curry, Dr. Richard Nero, David Novack, Cheryl Taylor, Fernando Valencia, and Natalie Wells-Reyes ("Plaintiffs") that Defendant had used an Internet pixel tracking technology supplied by Meta (Facebook), called a pixel (referred to herein as a "Tracking Tool"), and that, when Plaintiffs used Novant's websites or MyChart patient portal, certain personal or health-related information may have been disclosed in particular circumstances to a vendor. On August 23, 2022, Plaintiffs Kevin Curry and Christine Curry filed a class action complaint in the United States District Court

for the Middle District of North Carolina (the “Court”) captioned *Kevin Curry and Christine Curry v. Novant Health, Inc.*, No. 1:22-cv-00697. Several other cases were filed thereafter and were eventually consolidated under this case number and retitled *In re: Novant Health, Inc.* (the “Litigation”).¹

On November 18, 2022, Plaintiffs filed a Consolidated Class Action Complaint. ECF No. 20 (filed in Case No. 1:22-cv-00799 as ECF No. 9) (adding the claims of Plaintiffs Karyn Cook, Daymond Cox, Dr. Richard Nero, Cheryl Taylor, and Fernando Valencia and replacing Plaintiff Christine Curry with Plaintiff Meghan Curry). On December 23, 2022, Defendant moved to dismiss the Complaint in its entirety (“MTD”). ECF No. 25. The parties concluded briefing on February 10, 2023. ECF No. 34. Whilst the parties awaited the Court’s decision, the parties engaged in significant informal discovery and participated in private mediation (*see infra* § II(C)(3)(a)). On August 24, 2023, the Court issued its Order granting in part and denying in part Defendant’s MTD. ECF No. 44.

B. Settlement Negotiations

After meeting and conferring on multiple occasions regarding settlement, the Parties held a mediation on July 21, 2023, before Hunter R. Hughes (“Mr. Hughes”). *See* Declaration of Gary M. Klinger Support of Preliminary Approval of Class Action

¹ On October 19, 2022, the Court consolidated the following four cases: *Curry v. Novant Health, Inc.*, No. 1:22-cv-00697 (M.D.N.C.); *Novack v. Novant Health, Inc.*, No. 1:22-cv-700 (M.D.N.C.); *Van Allen v. Novant Health, Inc.*, No. 1:22-cv-00709 (M.D.N.C.); and *Wells-Reyes v. Novant Health, Inc.*, No. 1:22-cv-00799 (M.D.N.C.). *See* ECF No. 18 (filed in Case No. 1:22-cv-00799 as ECF No. 8). On December 28, 2022, *C.C. v. Meta Platforms, Inc.*, No. 1:22-cv-00970 (M.D.N.C.) was directed to be consolidated with the other pending actions in the matter *In re Novant Health, Inc.*, Lead Case No. 1:22-cv-00697.

Settlement and Notice Plan (ECF No. 52-2). The mediation was productive but did not result in a settlement in principle. *Id.*, ¶¶ 32-33. Over the next several weeks, the Parties continued to negotiate and ultimately reached an agreement in principle on a settlement, on August 21, 2023. *Id.* The Parties agreed to resolve all matters pertaining to, arising from, or associated with this Litigation, including all claims Plaintiffs and Settlement Class Members have or may have had against Novant and related persons and entities relating to Defendant’s use of the Tracking Tools. Throughout their negotiations, the Parties engaged in an extensive evaluation and discussion of the relevant facts and law, and the Parties carefully considered the risk and uncertainties of continued litigation. *Id.* The Parties diligently negotiated, drafted, and finalized the Settlement Agreement (“Settlement Agreement” or “S.A.”), notice forms, and claims process. *See id.*, ¶ 27. On October 12, 2023, Plaintiffs filed their Unopposed Motion for Preliminary Approval of Class Action Settlement and Notice Plan (ECF Nos. 51-52). The Court granted preliminary approval of the S.A. on November 6, 2023. *See* ECF No. 55.

C. Terms of the Settlement

As described in the Settlement Agreement, the settlement benefits are substantial in that they include monetary payments and will be paid from the Settlement Fund.

1. The Settlement Class

The Settlement Class is defined as all individuals residing in the United States who Defendant identified as potentially having their personal or health-related information disclosed to a third party because of Defendant’s use of Tracking Tools on Defendant’s websites or MyChart patient portal between May 1, 2020 and August 12, 2022. Excluded

from the Class are (i) Defendant, any entity in which Defendant has a controlling interest, and Defendant's affiliates, parents, subsidiaries, officers, directors, legal representatives, successors, subsidiaries, and assigns; (ii) any judge, justice, or judicial officer presiding over the Litigation and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly excludes themselves from the Settlement. *See* ECF 52-1, S.A., ¶ 14(l).

2. The Settlement Benefits

Pursuant to the Settlement Agreement, Defendant will pay \$6,660,000 to establish a non-reversionary Settlement Fund. *Id.*, ¶¶ 14(nn), 18, 21. Settlement Class Members ("Class Members") have and will continue to have an opportunity to submit a claim for a pro rata payment from the Settlement Fund. *Id.*, ¶ 28. To submit a claim, a Class Member need only submit a Claim Form before the Claim Deadline. *Id.*, ¶ 28, Ex. A. To calculate the Cash Payment to each Class Member, the Settlement Administrator will first distribute monies from the Settlement Fund as outlined in the Settlement Agreement and then divide the Net Settlement Fund pro rata amongst the Class Members who filed valid Claim Forms. As explained *infra* § II (E)(e), this settlement fund is an excellent result and in line with settlements in the Tracking Tool context across the country.

II. LEGAL ARGUMENT

A. Legal Standard Governing Attorneys' Fees

Rule 23(h) of the Federal Rules of Civil Procedure provides that in a class action settlement, "the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). The Supreme Court

has “recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); see *United States v. Tobias*, 935 F.2d 666, 667 (4th Cir. 1991) (explaining common fund is an “equitable exception to the “American rule” that parties bear their own costs of litigation”). The common fund doctrine vests the district court holding jurisdiction over the fund to spread the costs of litigation proportionately across all persons benefited by the suit. *Id.* The Supreme Court has “applied it in a wide range of circumstances as part of [its] inherent authority.” *US Airways, Inc. v. McCutchen*, 569 U.S. 88, 104 (2013) (collecting cases).

Class Counsel, with Plaintiffs’ assistance, have obtained significant results and benefits for the Class in the form of monetary payments from the \$6,660,000 non-reversionary common fund. Accordingly, and pursuant to the common fund doctrine and the Settlement Agreement, Class Counsel now apply for a total fee award of one-third of the Settlement Fund, or \$2,220,000, and reimbursement of reasonably incurred expenses of \$17,034.77. Plaintiffs also request approval of Service Awards in the amount of \$2,500 per Plaintiff (\$25,000 total) for their time and effort on behalf of the Settlement Class. These requests are reasonable considering the risk undertaken, the work performed, and the results achieved, and are consistent with similar awards approved in this Circuit. The Settlement Agreement is the product of skilled and dedicated efforts by Class Counsel through considerable litigation in a case involving complex issues of fact and law. Accordingly, these requests should be approved.

B. Percentage of the Fund Method is Appropriate

The award of attorneys' fees is within the sound discretion of the trial judge. *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 226 (4th Cir. 1978) (further citation omitted). While the Fourth Circuit has not made obligatory a particular method of determining fees in common fund cases, it has recognized the financial significance of the contingency fee and associated risks. *In re Abrams & Abrams, PA*, 605 F.3d 238, 245 (4th Cir. 2010); *Brundle on behalf of Constellis Employee Stock Ownership Plan v. Wilmington Tr., NA*, 919 F.3d 763, 786 (4th Cir. 2019), *as amended* (Mar. 22, 2019) (“courts routinely impose enhanced common fund awards to compensate counsel for litigation risk at the expense of beneficiaries who do not shoulder this risk.”).

In a class action settlement, “[c]ourts either use the lodestar method, the percentage of the fund method, or a combination of both.” *Phillips v. Triad Guaranty Inc.*, No. 1:09CV71, 2016 WL 2636289, at *2 (M.D.N.C. May 9, 2016). Within the Fourth Circuit, the percentage-of-the-fund method “is the preferred approach to determine attorneys’ fees.” *Kruger v. Novant Health, Inc.*, No. 1:14CV208, 2016 WL 6769066, at *2 (M.D.N.C. Sept. 29, 2016) (Internal citation omitted); *see also Phillips*, 2016 WL 2636289, at *2 (noting that district courts within the Fourth Circuit “overwhelmingly” prefer the percentage-of-the-fund method in common fund settlement); *Jones v. Dominion Res. Servs., Inc.*, 601 F. Supp. 2d 756, 758 (S.D.W. Va. 2009) (“The percentage method has overwhelmingly become the preferred method for calculating attorneys’ fees in common fund cases.” (collecting cases)).

The percentage-of-the-fund method provides a strong incentive for plaintiff's counsel to obtain the maximum possible recovery in the shortest time possible under the circumstances by removing the incentive, which occurs under the lodestar method, for class counsel to "over-litigate" or "draw out" cases in an effort to increase the number of hours used to calculate their fees. *See Jones*, 601 F. Supp. 2d at 759; *see also Ferris v. Sprint Communs. Co. LP*, No. 5:11-cv-00667-H, 2012 WL 12914716, at *6 (E.D.N.C. Dec. 13, 2012) (noting that the percentage method "better aligns the interests of class counsel and class members because it ties the attorneys' award to the overall result achieved rather than the hours expended by the attorneys.") (internal citation and quotation omitted); *DeWitt v. Darlington Cty.*, No. 4:11-cv-00740, 2013 WL 6408371, at *6 (D.S.C. Dec. 6, 2013) ("The percentage-of-the fund approach rewards counsel for efficiently and effectively bringing a class action case to a resolution, rather than prolonging the case in the hopes of artificially increasing the number of hours worked on the case to inflate the amount of attorneys' fees on an hourly basis.").

Under the percentage method, the attorneys' fee award is calculated using the gross amount of benefits provided to class members, including administrative costs, attorneys' fees and expenses. *See Ferris*, 2012 WL 12914716, at *7-8. In the Fourth Circuit, fees constituting one-third of the settlement (or more) have been found reasonable. *McAdams v. Robinson*, 26 F. 4th 149, 162 (4th Cir. 2022) (affirming attorneys' fees award of \$1,300,00 or 43% of the \$3,000,000 common fund class action settlement); *Kruger*, 2016 WL 6769066, at *6 (awarding attorneys' fees of \$10,666,666 comprising 1/3 of the monetary benefits made available to the class); *Chrismon v. Pizza*, No. 5:19-CV-155-BO,

2020 WL 3790866, at *5 (E.D.N.C. July 7, 2020) (noting that “[m]any courts in the Fourth Circuit have held that attorneys’ fees in the amount of 1/3 of the settlement fund is reasonable.”) (collecting cases)); *In re Cotton*, 3:18-cv-00499, 2019 WL 1233740, at *4 (W.D.N.C. Mar.15, 2019) (approving an award of 33 percent of the total settlement value); *Neal v. Wal-Mart Stores, Inc.*, 3:17-cv-00022, 2021 WL 1108602, at *2 (W.D.N.C. Mar. 19, 2021). Attorneys’ fees in common fund cases typically reflect “around one-third of the recovery.”²

C. The Relevant Factors Support the Fee Award.

The Fourth Circuit has not adopted specific factors for consideration in determining an appropriate attorneys’ fees award in a common fund case. There are two sets currently deployed in this Circuit, *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir.1974) (adopted in *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 226 (4th Cir. 1978))³

² See 5 NEWBERG ON CLASS ACTIONS § 15:73 (5th ed. 2016) (noting that a “33% figure provides some anchoring for the discussion of class action awards [to counsel]” and that “many courts have stated that ... fee award in class actions average around one-third of the recovery.”); accord Theodore Eisenberg & Geoffrey Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. OF EMPIRICAL LEGAL STUDIES, 27, 31, 33 (2004) (finding that courts consistently award 30–33% of the common fund).

³ The *Johnson* factors are as follows:

- (1) the time and labor required in the case,
- (2) the novelty and difficulty of the questions presented,
- (3) the skill required to perform the necessary legal services,
- (4) the preclusion of other employment by the lawyer due to acceptance of the case,
- (5) the customary fee for similar work,
- (6) the contingency of a fee,
- (7) the time pressures imposed in the case,
- (8) the award involved and the results obtained,
- (9) the experience, reputation, and ability of the lawyer,
- (10) the “undesirability” of the case,
- (11) the nature and length of the professional relationship between the lawyer and the client, and
- (12) the fee awards made in similar cases.

and *In re Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 261 (E.D. Va. 2009). Both focus on the reasonableness of the fees and many of the factors overlap. North Carolina federal courts have used the *In re Mills* factors in the past. *See, e.g. Speaks v. U.S. Tobacco Coop., Inc.*, 324 F.R.D. 112, 155 (E.D.N.C. 2018). The *In re Mills* factors support the fee request here: “(1) the results obtained for the [c]lass; (2) objections by members of the [c]lass to the settlement terms and/or fees requested by counsel; (3) the quality, skill, and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) public policy; and (7) awards in similar cases.” *In re Mills Corp. Sec. Litig.*, 265 F.R.D. at 261.

1. Class Counsel Obtained an Excellent Result for the Class

“In the Fourth Circuit, the most critical factor in calculating a reasonable fee award is the degree of success obtained.” *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 481 (D. Md. 2014). Class Counsel should be rewarded for litigating this matter with considerable diligence and efficiency. Although this matter was resolved through roughly a year of litigation, Class Counsel and Plaintiffs conducted substantial pre-suit investigation including consulting with a Tracking Technology expert, seamlessly coordinating with counsel for Plaintiffs across many similar complaints to conduct a unified proceeding before this Court, gaining the cooperation of all of Plaintiffs’ Counsel, drafting a comprehensive and detailed consolidated class action complaint, briefing and surviving Defendant’s MTD, conducting discovery for settlement purposes, and presenting this settlement for preliminary and final approval under Fed. R. Civ. P. 23. *See* Joint Declaration of Gary M. Klinger and

Scott C. Harris in Support of Plaintiffs’ Unopposed Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Award to Plaintiffs, ¶ 10 (“Ex. 1”).

The \$6,660,000 non-reversionary common fund is a strong recovery for the roughly 1,300,000 individuals and compares favorably to other data pixel cases. The following chart compares the amount recovered per Settlement Class Member against the amount recovered per class member in three other recent data privacy pixel class action settlements and highlights the substantial result achieved for the Settlement Class:

Case Name	Case Number	Settlement Amount	Class Size	Per Person
<i>John v. Froedtert Health, Inc.</i>	No. 23-CV-1935 (Milwaukee County Circuit Court)	\$2,000,000	435,000	\$4.59
<i>In re Advocate Aurora Health Pixel Litigation</i>	No. 22-CV-1253 (E.D. Wis.)	\$12,225,000	2,540,567	\$4.81
<i>In re Novant Health, Inc.</i>	No. 1:22-cv-00697 (M.D.N.C.)	\$6,660,000	1,362,165	\$4.89
<i>Doe v. Partners Healthcare System, Inc.</i>	No. 19-1651 (Superior Court of the Commonwealth of Massachusetts)	\$18,400,000	3,000,000	\$6.10

2. The Class is Responding Favorably to the Settlement so Far.

As of March 20, 2024, no Class Member has objected and 33 members opted out. *Id.*, ¶ 29. Settlement Class Counsel will update the number of exclusions including whether objections are filed in the Motion for Final Approval of Class Action Settlement. The objection and opt out deadlines are April 4, 2024. Notably, the Settlement Class has

responded favorably to the Settlement to date with the claims rate being over 11% (as of March 20, 2024), which is an excellent claims rate in a data privacy class action where the claims rates typically range from 1-3%. *Id.*, ¶ 26. The claims period remains open for almost two additional months (until May 6, 2024), meaning that the claims rate will almost certainly increase as additional Settlement Class Members submit claims for cash payments.

3. The Skill Required to Perform the Services Rendered Supports the Fee Request.

The expertise of the attorneys involved in this matter, combined with the complexity of the case, likewise supports the requested fee award. Class Counsel have demonstrated skill commensurate with their reputations and prosecuted a tough case on behalf of the Plaintiffs and the Settlement Class. *See generally* Memorandum in Support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement and Notice Plan (ECF No. 52). Six of the leading class action firms in the field of data privacy litigation cooperated to efficiently prosecute this action. *Id.*, ECF No. 52-2, Exs. A-F. Each firm invested substantial hours of both attorney and paralegal time. *See* Declarations of Class Counsel attached hereto as Exhibits 1-6.

Here, Class Counsel relied upon their vast experience handling data privacy class actions across the country to negotiate a non-reversionary common fund settlement with experienced defense counsel. Ex. 1, ¶¶ 31-32. Class Counsel utilized their experience to efficiently resolve this case after a full-day mediation session and many follow-up negotiations under the guidance of a qualified mediator, and to reach a uniform, class-wide

settlement in a cutting-edge, highly uncertain, and largely untested area of the law. *Id.*, ¶¶ 6, 18, 19, 2. The result achieved here is particularly noteworthy considering that pixel cases such as this one are relatively novel without much guiding legal precedent. Class Counsel’s skill in efficiently negotiating a robust \$6,660,000 non-reversionary common fund despite such serious legal risk and the risk of no recovery at all justifies the requested fee of the common fund. *See In re The Mills Corp. Sec. Litig.*, 265 F.R.D. at 262-63 (finding that Counsel’s ability to resolve the case within one year of the Court’s denial of Defendant’s Motion to Dismiss to be indicative of Counsel’s “skill and efficiency.”). Accordingly, this factor further supports Class Counsel’s request for attorneys’ fees.

a. A Lodestar Crosscheck Confirms the Reasonableness of Class Counsel’s Fee Request.

“Given that courts in the Fourth Circuit approve of the percentage-of-the-fund method for awarding fees in common fund cases, it is not necessary for the Court to conduct a lodestar analysis.” *Kruger*, 2016 WL 6769066, at *4 (internal citations and quotations omitted). “However, courts in this Circuit will review the lodestar method to serve as a ‘cross-check’ to ensure that the percentage award is fair and reasonable.” *Id.* “[W]here used as a mere cross-check, the hours documents by counsel need not be exhaustively scrutinized by the district court.” *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 50 (2d Cir. 2000); *see also Jones*, 601 F. Supp. 2d at 766 (noting that the court “may use Class Counsels’ estimate of the hours they spent working on the case” to complete the lodestar cross-check). Class Counsel’s attorneys’ fees request is reasonable when analyzed under the lodestar cross-check. Here, as Counsel attest, they reasonably expended 1,573.30

hours⁴ litigating this case. Ex. 1, ¶5. Cognizant of the need to work efficiently, Counsel for the six firms representing Plaintiffs and Class Members coordinated their work to avoid duplication of effort and assigned work to associates and paralegal personnel whenever possible and prudent to keep costs low. *Id.*

Over the course of the litigation, Class Counsel diligently and creatively litigated; conducted extensive research and investigation as to the challenging and complex legal and factual claims; drafted both a voluminous and detailed initial class action complaint and a voluminous and detailed class action amended complaint; researched and drafted an opposition to Defendant’s motion to dismiss, engaged in substantial informal discovery and a full day mediation with mediator Hunter Hughes, Esq. with substantial negotiations and exchange of legal and factual memoranda and information; and drafted the Settlement Agreement and Preliminary Approval Motion and its concomitant notices. Ex. 1, ¶ 6. The hours Counsel spent litigating this matter reflect the reasonable and necessary effort required to achieve such a substantial result. Ex. 1, ¶ 7.

The rates are reasonable too. An “attorney’s actual billing rate provides a starting point for purposes of establishing a prevailing market rate.” *Rum Creek Coal Sales, Inc. v. Caperton*, 31 F.3d 169, 175 (4th Cir. 1994) (internal quotation omitted). Here, Class Counsel includes some of the leading counsel in data breach and internet privacy class

⁴This number reflects hours incurred as of March 17, 2024. Additional time will be spent responding to any objections, drafting and revising the motion for final approval, preparing for and attending the fairness hearing and obtaining final approval, communicating with defense counsel, communicating with the Settlement Administrator and Class Members, assisting the Settlement Administrator in distributing Settlement payments to Class Members submitting valid claims, and litigating any appeal if necessary.

action litigation nationwide. *See* ECF No. 52-2 at Exhibits A-F. The attorneys' regular billing rates are based on the customary rates and these hourly rates are within the reasonable range of rates charged by attorneys with similar levels of experience and credentials in the data breach class action field. *Id.*; *see also* Ex. 1, ¶ 8.

As detailed in each individual firm's declaration, Class Counsels' billing rates are within the range of rates approved in the Fourth Circuit and others in this state as reasonable. *See e.g., Kruger*, 2016 WL 6769066, at *4 (approving hourly rates of \$998 for attorneys with 25 years of experience, \$850 for attorneys with 15-24 years of experience, \$612 for attorneys with 5-15 years of experience, \$460 for attorneys with 2-4 years of experience; \$309 for paralegals and law clerks, and \$190 for legal assistants); *Rehberg v. Flowers Baking Co. of Jamestown, LLC*, No. 3:12-cv-00596-MOC-DSC (W.D.N.C. June 30, 2017), ECF Nos. 250, 245-5, 245-1 (approving hourly rates of \$975 for an attorney practicing 23 years and \$590 for an attorney practicing 10 years); *McCoy v. North State Aviation, LLC*, No. 17-cv-346 (M.D.N.C. June 15, 2018) (Doc. 51).

Furthermore, the multiplier in this case is below those awards in other class action cases. In the Fourth Circuit, courts have awarded positive multipliers of up to greater than 4.5. *See e.g., Kruger*, 2016 WL 6769066, at *5 (multiplier of 3.69); *Gaston v. LexisNexis Risk Solutions Inc.*, No. 5:16-cv-00009, 2021 WL 2077812, at * 7 (W.D.N.C. May 24, 2021) (multiplier of 1.85); *Nieman v. Duke Energy Corp.*, No. 3:12-cv-00456, 2015 WL 13609363, at *1 (W.D.N.C. Nov. 2, 2015) (approving a lodestar multiplier of greater than 4.5 and discussing that a typical lodestar multiplier in class action matters ranges from 1.3

to 4.5); *In re Microstrategy, Inc.*, 172 F. Supp. 2d 778, 790 (E.D. Va. 2001) (multiplier of 2.6); *Berry v. Schulman*, 807 F.3d 600 (4th Cir. 2015) (multiplier of 1.99).

Here, Settlement Class Counsel's requested fee represents a multiplier of 1.86 as of March 17, 2024. The multiplier will continue to decrease through the administration of settlement. This is certainly on the low end of the multipliers discussed above.

The lodestar cross-check confirms that the requested fee is reasonable.

4. Data Privacy Cases are Novel and Inherently Complex.

Although nearly all class actions involve a high level of risk, expense, and complexity, this is a particularly complex class action in an especially risky area of data privacy stemming from Tracking Tool technologies. Similar Tracking Tool-based data privacy cases have faced substantial hurdles in making it past the pleading stage. *See, e.g., Kurowski v. Rush Sys. for Health*, No. 22 C 5380, -- F. Supp. 3d --, 2023 WL 2349606 (N.D. Ill. Mar. 3, 2023), reconsidered by 2023 WL 8544084 (N.D. Ill. Dec. 11, 2023); *Hartley v. Univ. of Chicago Med. Ctr.*, No. 22 C 5891, 2023 WL 7386060 (N.D. Ill. Nov. 8, 2023). This case is no different in that it was fraught with numerous risks, including that Plaintiffs would still need to gain class certification in a Tracking Tool disclosure case when no case to date has attained class certification. *Roldan v. Bland Landscaping Co., Inc.*, No. 3:20-CV-00276, 2022 WL 17824035, at *4 (W.D.N.C. Dec. 19, 2022) ("In complex, multi-year class actions, the risks inherent in the litigation are immense. Indeed, settlement must be evaluated taking into account the uncertainty and risks involved in litigation and in light of the strength of the claims and possible defenses.") (internal citations and quotations omitted); *see also In re Equifax Inc. Customer Data Sec. Breach*

Litig., No. 1:17-md-2800, 2020 WL 256312, at *6 (N.D. Ga. Mar. 17, 2020) (recognizing the complexity and novelty of issues in data privacy class actions); *Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) (noting that data privacy cases “are particularly risky, expensive, and complex.”). This case is no exception to that rule and the Settlement was only obtained through the dedicated efforts of Class Counsel.

5. There was Substantial Risk of Non-Payment, and Public Policy Favors the Fee Request.

Plaintiffs and Class Counsel faced the genuine and ever-present risk of zero recovery in the case, like all cases on a contingency fee basis. Data privacy cases are, by nature, particularly risky and expensive. Such cases also are innately complex. *See, e.g., In re Equifax*, 2020 WL 256312, at *6 (recognizing the complexity and novelty of issues in data privacy class actions); *Gordon*, 2019 WL 6972701, at *1 (“noting that data privacy “cases are particularly risky, expensive, and complex.”). This case is no exception to that rule. It involves novel issues of allegedly unauthorized use of Tracking Tools involving over 1,300,000 Class Members, complicated and technical facts, and a well-funded and motivated defendant.

Class Counsel, who took this matter on contingency, who expended significant time and energy into the case, and who have not yet been compensated, faced numerous challenges. Certainly, the Court’s ruling on Novant’s motion to dismiss (Doc. No. 44) puts a point on some of the risks faced here. Courts have recognized that such risk deserves extra compensation and is a critical factor in determining the reasonableness of

a fee. *See, e.g. Stocks v. Bowen*, 717 F. Supp. 397, 402 (E.D.N.C. 1989); *Gilbert LLP v. Tire Eng'g & Distribution, Ltd. Liab. Co.*, 689 F. App'x 197, 201 (4th Cir. 2017); *In re Dun & Bradstreet Credit Svcs. Cons. Lit.*, 130 F.R.D. 366, 373 (S.D. Ohio 1990); *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988), *aff'd*, 889 F.2d 21 (11th Cir. 1990); *In re Cont. Ill. Sec. Litig.*, 962 F.2d 566, 569 (7th Cir. 1992). Thus, the existence of these issues, which were issues of first impression, exemplify that Class Counsel risk of nonpayment was real and justifies the requested fee.

Moreover, public policy favors incentivizing “capable and seasoned counsel” to undertake complex litigation. *In re The Mills*, 265 F.R.D. at 263. Class Counsel have and are currently handling many health care related pixel cases, and are on the forefront of pixel litigation. Ex. 1, ¶ 25. Public policy concerns thus also weigh in favor of granting the fee request. *See Haney v. Genworth Life Ins. Co.*, No. 3:22-cv-55, 2023 WL 1111646, at *8 (ED Va. Jan. 30, 2023) (finding uncertain recovery and public policy “weights in favor of the requested fee”).

6. Attorneys’ Fees Awards in Similar Cases

Class Counsel’s fee request is consistent with the other data privacy class action cases. For example, the fee request awarded in *John v. Froedtert Health Inc.*, No. 2023CV001935 (Milwaukee County, Circuit Court), a similar pixel tracking tool class action settlement, was 35% of the gross settlement fund. Ex. 1, ¶ 30. Courts across the country routinely award attorneys’ fees of 1/3 of the common fund in data privacy class action settlements. *Lamie v. Lending Tree, LLC*, No. 3:22-cv-00307-FDW-SCR, Doc. No. 60 (WD NC February 27, 2024)(approving one-third contingent fee for common fund data

breach settlement); *Thomsen v. Morley Cos., Inc.*, No. 1:22-cv-10271, No. 2023 WL 3437802, at *2 (E.D. Mich. May 12, 2023) (noting that “a 33% award is presumably reasonable” for attorneys’ fees in a data privacy class action); *In re Forefront Data Breach Litig.*, No. 21-cv-887, 2023 WL 6215366, at *8 (E.D. Wis. Mar. 22, 2023) (awarding attorneys’ fees of 1/3 of the settlement fund in a data privacy class action settlement); *Stoll v. Musculoskeletal Institute*, No. 8:20-cv-1798, 2022 WL 16927150, at *3 (M.D. Fla. July 27, 2022) (same); *Migliaccio v. Parker Hannifin Corp.*, No. 1:22-cv-835, ECF No. 42 (S.D. Ohio Aug. 2, 2023) (same); *Tucker v. Marietta Area Healthcare, Inc.*, No. 2:22-cv-184, ECF No. 38 (S.D. Ohio Dec. 7, 2023) (same).

D. Class Counsels’ Litigation Expenses are Reasonable.

Federal Rule of Civil Procedure 23(h) allows a court approving a class settlement to “award reasonable...nontaxable costs that are authorized by law or by the parties’ agreement.” Accordingly, courts in the Fourth Circuit allow plaintiffs to recover “reasonable litigation-related expenses as part of their overall award.” *Decohen*, 299 F.R.D. at 483 (citation omitted). “Litigation expenses such as supplemental secretarial costs, copying, telephone costs and necessary travel are integrally related to the work of the attorney and the services for which outlays are made may play a significant role in the ultimate success of litigation....” *Daly v. Hill*, 790 F.2d 1071, 1083 (4th Cir. 1986).

The Settlement Agreement permits Class Counsel to request reimbursement of litigation expenses not to exceed \$30,000. S.A., ¶ 65. Class Counsel’s request for litigation expenses of \$18,234.70 is reasonable because each expense was incurred in the prosecution of this litigation. Ex. 1, ¶ 33-34. The majority of Class Counsel’s expenses

were for Mr. Hughes' mediation services. The remaining costs are attributed to the filing fee, the costs of service of process, *pro hac vice* admissions, and forthcoming travel and lodging expenses for the final approval hearing currently scheduled for June 6, 2024. Courts regularly award litigation expenses in addition to attorneys' fees in class action cases. *See, e.g., Kabore v. Anchor Staffing, Inc.*, No. L-10-3204, 2012 WL 5077636, at *10 (D. Md. Oct. 17, 2012) ("It is well-established that Plaintiff who are entitled to recover attorneys' fees are also entitled to recover reasonable litigation-related expenses as part of their overall award."). Class Counsel's request for expenses should be approved as fair and reasonable given that counsel has a strong incentive to keep costs and expenses at a reasonable level due to the high risk of no recovery when the fee is contingent.

E. The Requested Service Awards are Reasonable.

Service awards are "routinely approved" in class actions to "encourage socially beneficial litigation by compensating named plaintiff for their expenses on travel and other incidental costs, as well as their personal time spent advancing the litigation on behalf of the class and for any personal risk they undertook." *Kay Co.*, 749 F. Supp. 2d at 472; *Berry*, 807 F.3d at 613 (service awards compensate the class representative for work done on behalf of the class and make up for financial risk undertaken in bringing the action). Serving as a class representative "is a burdensome task and it is true that without class representatives, the entire class would receive nothing." *Id.* at 473.

In this litigation, Plaintiffs put themselves forward in litigating this case, kept abreast of the case's status, participated in settlement negotiations, and discussed with counsel various aspects of the case. *See Burke v. Shapiro, Brown & Alt, LLP*, No. 3:14-cv-

201 (DJN), 2016 WL 2894914, at *6 (E.D. Va. May 17, 2016). Much larger service awards have been regularly approved by judges in this District and the Fourth Circuit. *See e.g., Kruger*, 2016 WL 6769066, at *6 (granting \$25,000 service awards); *Brown v. Charles Schwab & Co., Inc.*, No. 2:07-cv-03852, 2011 WL 13199227, at *7 (D.S.C. July 26, 2011) (approving \$10,000 service award to named plaintiff); *see also In re MI Windows & Doors Prods. Liab. Litig.*, No. 2:12-mn-00001, 2015 WL 4487734, at *5 (D.S.C. July 23, 2015) (granting “modest” service award of \$5,000 for each named Plaintiff); *Neal v. Wal-Mart Stores, Inc.*, 3:17-cv-00022, 2021 WL 1108602, at *2 (W.D.N.C. Nov. 2, 2015) (approving service awards of \$10,000 to each Settlement Class Representative); *In re Cotton*, 2019 WL 1233740, at *4 (approving service awards of \$10,000 to each Settlement Class Representative). The requested Service Awards of \$2,500 each are less than what has been approved in similar common fund data privacy class action settlements. *See, e.g., Lutz v. Electromed, Inc.*, No. 21-cv-02198, ECF No. 73 (D. Minn.) (service award of \$9,900 in a data breach class action); *In re Capital One Consumer Data Security Breach Litig.*, No. 119MD2915AJTJFA, 2022 WL 17176495, at *5 (E.D. Va. Nov. 17, 2022) (service award of \$5,000 to each plaintiff in a data privacy class action).

The Class Representative amply fulfilled their duties, making the Service Award requested appropriate. While Class Representatives did not have to undergo extensive discovery or depositions, Plaintiffs did gather documents and material in support of their claims that were used in drafting the Complaint and Consolidated Class Action Complaint, and were actively involved in the mediation that ultimately resolved this case. *See* Declarations of Class Representatives attached as Exhibits 7-16.

III. CONCLUSION

Because the Settlement Agreement is fair, reasonable, and adequate, Plaintiffs respectfully request that the Court grant final approval of the Class Action Settlement, including pro rata cash payments to Class Members who have submitted valid claims and awarding Service Awards in the amount of \$2,500 to each Class Representative, \$2,220,000 in reasonable attorneys' fees, and \$18,234.70 in litigation expenses.

Date: March 20, 2024

Respectfully submitted,

/s/ Scott C. Harris

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*Attorneys for Plaintiffs and Proposed
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LOCAL RULE 7.3(d)(1) WORD COUNT CERTIFICATION

I hereby certify, on March 20, 2024, that this Brief complies with Local Rule 7.3(d)(1) in that it does not exceed 5,942 words in length, including the body of the brief, headings, and footnotes.

/s/ Scott C. Harris

Scott C. Harris

CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2024, I served a copy of the foregoing via electronic filing in the ECF system.

/s/ Scott C. Harris

Scott C. Harris

EXHIBIT 1:
Joint Declaration of Gary M. Klinger and Scott C. Harris,
Milberg Coleman Bryson Phillips Grossman, PLLC

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

In re: Novant Health, Inc.

LEAD Case No. 1:22-cv-00697

Consolidated with: 1:22-cv-00700-WO-JEP; 1:22-cv-00709-WO-JEP, and 1:22-cv-00799-WO-JEP

**JOINT DECLARATION OF GARY M. KLINGER AND SCOTT C. HARRIS
IN SUPPORT OF PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND
SERVICE AWARD TO PLAINTIFFS**

We, Gary M. Klinger and Scott C. Harris, being competent to testify, make the following declaration:

1. We are both Senior Partners at the law firm of Milberg Coleman Bryson Phillips Grossman, PLLC ("Milberg"). We are some of the lead attorneys for Plaintiffs.

2. We make this joint declaration in support of Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Award to Plaintiffs. Except as otherwise noted, we have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

3. A true and correct copy of the Settlement Agreement (“S.A.”) was filed with the Court (ECF No. 52-1)

4. We incorporate by reference our previous Declarations in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and Notice Plan (ECF No. 52-2; 53).

5. Class Counsel have incurred a lodestar of \$1,184,828.70, 1,573.30 hours worked, and \$18,234.70 in expenses. Cognizant of the need to work efficiently, Counsel for the six firms representing Plaintiffs and Class Members coordinated their work to avoid duplication of effort and assigned work to associated and paralegal personnel whenever possible and prudent to keep costs low.

6. Over the course of the litigation, Class Counsel diligently and creatively litigated, conducted extensive research and investigation as to the challenging and complex legal and factual claims; drafted both a voluminous and detailed initial complaint and a voluminous and detailed amended complaint; engaged in a full day mediation with mediator Hunter Hughes, Esq. with substantial negotiations and exchange of legal and factual memoranda and information; and drafted the Settlement Agreement and Preliminary Approval Motion and its concomitant notices.

7. The hours Class Counsel spent litigating this matter reflect the reasonable and necessary effort required to achieve such a satisfactory result.

8. The attorneys' regular billing rates are based on the customary rates and these hourly rates are within the reasonable range of rates charged by attorneys with similar levels of experience and credentials in the data breach class action field working around the nation.

9. As detailed in each Firm's Declaration, Class Counsels' billing rates are within the range of rates approved in the Fourth Circuit.

TIME AND LABOR EXPENDED

10. Although this matter was resolved through roughly a year of litigation, Class Counsel and Plaintiffs conducted substantial pre-suit investigation including consulting with a Tracking Technology expert, seamlessly coordinating with counsel for Plaintiffs across several jurisdictions to conduct a unified proceeding before this Court, gaining the cooperation of all of Class Counsel, drafting a comprehensive and detailed consolidated complaint, briefing and surviving Defendant's motion to dismiss, conducting discovery for settlement purposes, and presenting this settlement for preliminary and final approval under Fed. R. Civ. P. 23.

11. Class Counsel conducted substantial pre-suit investigation to determine exactly where the pixel was located on Defendant's Website and to

determine the types of personal information it was unlawfully disclosing to third parties without Plaintiffs' consent. This included retaining a data privacy expert and receiving a detailed report from the expert before filing the initial complaint. Class Counsel's substantial efforts in investigating this case and consulting with an expert permitted Class Counsel to make very informed decisions about presenting Plaintiffs' claims in this case, supervising in-depth plaintiff vetting for suitable class representative for this matter, researching and drafting the thorough and detail Consolidated Complaint, and participating in protracted settlement negotiations.

12. Class Counsel spent significant time and effort coordinating with other Plaintiffs' Counsel.

13. Many class action complaints were filed within this District, in the Middle District of North Carolina, and in other courts. Class Counsel worked with the attorneys for Plaintiffs across all cases outside of the Middle District of North Carolina to ensure all cases were stayed or were transferred to this Court.

14. Notably, we were able to obtain the full support of our colleagues to be appointed as Class Counsel over the Settlement.

15. Class Counsel worked with many potential Class Members to thoroughly review Class Members' claims to locate Plaintiffs who were willing to serve as Class Representatives.

16. Class Counsel created extensive Plaintiff vetting questionnaires and spent significant time speaking with Class Members about the content of the Consolidated Class Action Complaint.

17. Class Counsel oversaw the filing of the consolidated class action complaint including reviewing all potential claims in the causes of action that were ultimately asserted in the Consolidated Complaint.

18. Plaintiffs also engaged in detailed, protracted settlement negotiations with Defendant that included a full-day mediation session with renowned mediator Hunter S. Hughes.

19. In preparation of the mediations, Plaintiffs issued detailed settlement information requests to Defendant so that Plaintiffs would be in a position to make informed settlement demands and participate in productive settlement negotiations.

20. Furthermore, Plaintiffs had conducted extensive legal research to analyze the strengths and weaknesses of their legal claims.

21. Class Counsel were able to negotiate one of the only data privacy class action settlements based on a pixel when this Settlement was reached.

22. Class Counsel were extremely prepared during settlement negotiations, including having retained a data pixel expert to assist in Class Counsel's evaluation of the case.

The Skill Required to Perform the Services Rendered

23. The expertise of the attorneys involved in this matter, combined with the complexity of the case, likewise supports the requested fee award. Class Counsel have demonstrated skill commensurate with their reputations and prosecuted a tough case on behalf of the Plaintiffs and the Settlement Class.

24. Six of the leading class action firms in the field of Data Security litigation cooperated to bring and prosecute this action. Each invested substantial hours of both attorney and paralegal time.

25. Each firm is highly experienced and well-regarded in the Data Security class-action litigation field. Class Counsel have and are currently handling many health care related pixel cases, and are on the forefront of pixel litigation.

The Results Obtained Strongly Weigh in Favor of the Requested Fee Award

26. The Settlement Class has responded favorably to the Settlement to date with the claims rate being over 11.1% (as of March 20, 2024), which is

an excellent claims rate in a data privacy class action where the claims rates typically range from 1-3%.

27. We believe this is an excellent claims rate for this type of case because consumer cases around the country often have very low claims' rates. See, e.g., *Poertner v. Gillette Co.*, 618 Fed.Appx. 624, 625–26 (11th Cir. 2015) (approving a settlement involving more than seven million class members where the claims rate was roughly 0.75%); *LaGarde v. Support.com, Inc.*, Case No. 13-609, 2013 WL 1283325, at *2–10 (N.D. Cal. Mar. 26, 2013) (approving class action settlement with a claims rate 0.17% and noting 92% of the class members received notice via email); *In re Apple iPhone 4 Prods. Liab. Litig.*, Case No. 10-2188, 2012 WL 3283432, at *1–3 (N.D. Cal. Aug. 10, 2012) (approving a class action settlement with claims rate between 0.16% and 0.28%); *Trombley v. Bank of Am. Corp.*, Case No. 08-CV-456, 2012 WL 1599041, at *2 (D. R.I. May 4, 2012) (approving a class action settlement that garnered 0.9% claims rate); *In re Packaged Ice Antitrust Litig.*, Case No. 08-MDL-1952, 2011 WL 6209188, at *14 (E.D. Mich. Dec. 13, 2011) (approving a class action settlement with a claims rate of less than 1%); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944–45 (9th Cir. 2015) (approving thirty-five million member settlement where less than four percent of class members filed claims); *Touhey v. United States*, Case No. 08-1418, 2011 WL 3179036, at

*7–8 (C.D. Cal. July 25, 2011) (approving a class action settlement with a response rate of two percent); *Perez v. Asurion Corp.*, 501 F.Supp.2d 1360, 1377–78 (S.D. Fla. 2007) (approving settlement where 1.1% of class members filed claims before the Court issued its decision).

28. With the claim deadline being May 6, 2024, the claims period remains open for roughly two more months meaning that the claim rate will grow as additional Settlement Class Members submit claims to receive a cash payment from the Settlement. The objection and opt out deadlines are April 4, 2024.

29. As of March 20, no class member has objected and only 33 class members have opted out. Settlement Class Counsel will update the number of exclusions including whether objections are filed in the Motion for Final Approval of Class Action Settlement.

30. This fee request is similarly in line with the aforesaid medical data privacy pixel cases. For example, the fee request awarded in *John v. Froedtert, No. 23-CV-1935 (Milwaukee County Circuit Court)* (a settlement approved in Wisconsin State court) was also 35% of the gross settlement fund.

The Experience, Reputation, and Ability of an Attorney Support the Fee Award

31. The experience, reputation and ability of class counsel is another factor courts evaluate in determining an appropriate attorneys' fees award.

Here, Class Counsel relied upon their vast experience handling data privacy class actions across the country to negotiate a non-reversionary common fund settlement with experienced defense counsel.

32. Class Counsel utilized their experience to efficiently resolve this case after two mediation sessions with a qualified mediator and to reach a uniform, class-wide settlement in a cutting-edge, highly-uncertain and largely untested area of the law.

The Requested Fee Award Includes Class Counsel's Reasonably Incurred Expenses

33. The requested fee award also includes Settlement Class Counsel's reasonably incurred expenses. Class Counsel has incurred \$18,234.70 in costs litigating this case.

34. The majority of Class Counsel's expenses were the one-half cost of Mr. Hughes' mediation services. The remaining costs are attributed to the filing fee, the costs of service of process, *pro hac vice* admissions, and forthcoming travel and lodging expenses for the final approval hearing currently scheduled for June 6, 2024, at 9:30 am at the United States District Court, Middle District of North Carolina, 324 W. Market St., Greensboro, North Carolina, 27401.

35. Class Counsel's expenses here, totaling \$18,234.70, all fall into these categories and were all reasonably incurred in pursuing this litigation.

Time Incurred by Milberg Coleman Bryson Phillips Grossman PLLC

36. Our firm along with Chestnut Cambronne PA, Markovits, Stock, & DeMarco, LLC, Clayeo C. Arnold, A Professional Corp., Wolf Haldenstein Adler Freeman & Herz, LLP, and The Lyon Firm were approved by the Court as adequate counsel to represent the proposed Settlement Class.

37. A summary indicating the amount of time expended by the partners, associates, and professional support staff of Milberg Coleman Bryson Phillips Grossman PLLC as of March 19, 2024 involved in the litigation as set forth below:

Timekeeper	Rate	Hours	Cumulative Value
Gary M. Klinger	\$850.00 / \$878.00	105	\$89,278.00
David K. Lietz	\$919.00 / \$997.00 / \$1057.00	89.2	\$87,644.20
Scott Harris	\$764.00 / \$829.00 / \$878.00	88.6	\$72,613.40
Glen Abramson	\$997.00 / \$1057.00	61.6	\$61,889.20
John Nelson	\$468.00 / \$508.00	34.7	\$17,363.60
Alex Honeycutt	\$413.00 / \$500.00	40.1	\$16,596.10
CJ Cuneo	\$829.00	10.5	\$8,704.50
Jacob Morse	\$538.00	.2	\$107.60
Sandra Passanisi	\$208.00 / \$225.00 / \$239.00	15	\$3,315.80
Heather Sheflin	\$225.00 / \$239.00	2.8	\$638.40

Tiffany Kuiper	\$208.00	8.3	\$1,726.40
Ashley Tyrrell	\$208.00 / \$239.00	4.6	\$969.20
	TOTAL	460.6	\$360,846.40

38. The lodestar calculation is based on our firm's current billing rates and was prepared from contemporaneous time records regularly prepared and maintained by my firm. The hourly rates for our firm's partners, attorneys, and professional support staff included are the usual and customary hourly rates charged for services in similar complex litigation throughout the nation.

39. In addition, our firm has submitted fee petitions in other cases that have reported hourly rates at amounts comparable to those sought herein, and courts have approved an award of attorneys' fees in such cases. *See, e.g., In re: GE/CBPS Data Breach Litigation, Case No. 1:20-cv-02903 (KPF) (S.D.N.Y. 3/28/2023) (Judge Failla); Powers, Sanger et al v. Filters Fast LLC, Case 3:20-cv-00982-jdp (WD WI, July 222, 2022), ECF 84) where the fee application was submitted on a lodestar basis; James v. Cohnreznick LLP, Case Number: 1:21-cv-06544-LJL (SD NY September 20, 2022) (fee application submitted on both percentage of benefit and lodestar calculation); In re Deva Concepts Product Liability Litigation, Case 1:20-cv-01234-GHW, Order Granting Motion for Attorneys' Fees, Document 129 (January 3, 2022); see also Document 121-1*

(Declaration of Gary E. Mason detailing billing rates for Mr. Lietz and Mr. Klinger, filed 10/01/21).

40. Our firm followed the billing protocol in effect for all counsel billing time to this case and conducted internal audits to ensure that the lodestar submitted includes only compensable work to prepare complaints, respond to motions to dismiss, evaluate and consult with experts, attend the mediation, consult with clients to provide informal discovery and review information provided with defendants.

41. In addition, after the mediation, we spent numerous hours negotiating on terms for the settlement and then preparing all of the settlement related documents. Expense items are billed separately and are not duplicated in our firm's lodestar.

42. The expenses our firm incurred in litigating this action are reflected in the books and records of our firm. These books and records are prepared from expense vouchers, receipts, and check records and other source materials and accurately reflect the expenses incurred.

43. Our firm's expenses are summarized below. These expenses were reasonable and necessarily incurred on behalf of the class as court and travel costs.

Disbursement	Total
Filing Fee – Complaint (22-00709)	\$402.00
Filing Fee – Complaint (22-00697)	\$402.00
Filing Fee – Complaint (22-00700)	\$402.00
Service of Process	\$157.75
Special Appearance Fees (3)	\$75.00
ADR	\$10,000.00
Travel and Lodging for Final Approval Hearing	\$1,200
Experts	\$93.00
TOTAL	\$12,731.75

We declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 20, 2024

/s/ Gary M. Klinger
Gary M. Klinger

/s/ Scott C. Harris
Scott C. Harris

EXHIBIT 2:
Declaration of Terence R. Coates,
Markovits Stock & DeMarco, LLC

**IN THE UNITED STATE DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

In re: Novant Health, Inc.

LEAD Case No. 1:22-cv-00697
Consolidated with: 1:22-cv-
00700-WO-JEP; 1:22-cv-00709-
WO-JEP, and 1:22-cv-00799-
WO-JEP

**DECLARATION OF TERENCE R. COATES IN SUPPORT OF PLAINTIFFS’
MOTION FOR AN AWARD OF ATTORNEYS’ FEES, REIMBURSEMENT OF
EXPENSES, AND SERVICE AWARDS TO CLASS REPRESENTATIVES**

1. I am the managing partner of the law firm of Markovits, Stock & DeMarco, LLC. I am admitted in the State of Ohio. I make this Declaration in support of Plaintiffs’ Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Awards to Class Representatives (the “Motion”).

2. My firm along with attorneys from Milberg Coleman Bryson Phillips Grossman PLLC; Chestnut Cambronne PA; Clayco C. Arnold, A Professional Corp.; Wolf Haldenstein Adler Freeman & Herz, LLP; and The Lyon Firm were preliminarily-approved by the Court to serve as Class Counsel for the Settlement Class.

EXPERIENCE IN CLASS ACTION CASES

3. I have extensive experience handling complex class action cases including securities, commercial, antitrust and data breach litigation. I am currently the Secretary of the Cincinnati Bar Association’s Board of Trustees and the Executive Director of the Potter Stewart Inn of Court. Moreover, I am a frequent speaker for the plaintiffs’ perspective on recent trends in data privacy class action cases including having participated as a panel

speaker at The Sedona Conference Working Group 11 Midyear Meeting 2022 “Emerging issues in privacy and cybersecurity class action litigation” in Cleveland, Ohio on November 3, 2022; Trial Lawyers of Mass Tort’s conference in Big Sky, Montana in March 2023; the NetDiligence cybersecurity summit in Ft. Lauderdale, Florida in February 2023; the Beazley Insurance national conference in Ft. Lauderdale, Florida in March 2023; the JAMS roundtable for selecting mediators in September 2023; and the Trial Lawyers of Mass Tort’s conference in Cabo, Mexico in December 2023. I am currently participating as a member of class counsel in several data privacy cases pending around the country, including the following representative examples: *In re Advocate Aurora Health Pixel Litigation*, No. 22-CV-1253-JPS (E.D. Wis.) (class counsel for a \$12.225 million data privacy class action settlement); *Sherwood v. Horizon Actuarial Services, LLC*, No. 1:22-cv-1495 (N.D. Ga) (class counsel for an \$8,733,446.36 data breach class action settlement); *Phillips v. Bay Bridge Administrators, LLC*, No. 23-cv-00022 (W.D. Tex.) (sole class counsel for a \$2,516,890 data breach class action settlement); *Tucker v. Marietta Area Health Care, Inc.*, No. 2:22-cv-00185 (S.D. Ohio) (class counsel for a \$1.75 million data breach class action settlement); *Migliaccio v. Parker Hannifin Corp.*, No. 1:22-CV-00835 (N.D. Ohio) (class counsel for a \$1.75 million data breach class action settlement); *Vansickle v. C.R. England, Inc.*, No. 2:22-cv-00374 (D. Utah) (class counsel for a \$1.4 million data breach class action settlement); *Jones v. P2ES Holdings, LLC*, No 23-cv-00408 (D. Colo.) (class counsel for a \$1.25 million data breach class action settlement); *Pederson v. AAA Collections, Inc.*, No. 2:2022-cv-4166 (D.S.D.) (class counsel for

\$865,000 data breach class action settlement); and, *Lutz v. Electromed, Inc.*, No. 0:21-cv-02198 (D. Minn.) (class counsel in a \$825,000 data breach class settlement).¹

4. Courts recognize me and my firm as being experienced with handling complex cases including class actions. *Bedont v. Horizon Actuarial Services, LLC*, No. 1:22-CV-01565, 2022 WL 3702117, at *2 (N.D. Ga. May 11, 2022) (noting that class counsel, including Mr. Coates, “are well qualified to serve as Interim Co-Lead Class Counsel and that they will fairly, adequately, responsibly, and efficiently represent all Plaintiffs in the Cases in that role.”); *Shy v. Navistar Int’l Corp.*, No. 3:92-CV-00333, 2022 WL 2125574, at *4 (S.D. Ohio June 13, 2022) (“Class Counsel, the law firm Markovits, Stock & DeMarco, LLC, are qualified and are known within this District for handling complex cases including class action cases such as this one.”); *Bechtel v. Fitness Equip. Servs., LLC*, 339 F.R.D. 462, 480 (S.D. Ohio 2021) (“plaintiffs’ attorneys have appeared in this Court many times and have substantial experience litigating class actions and other complex matters.”); *Schellhorn v. Timios, Inc.*, No. 2:221-cv-08661, 2022 WL 4596582, at *4 (C.D. Cal. May 10, 2022) (noting that Class Counsel, including “Terence R. Coates of Markovits, Stock & DeMarco, LLC, have extensive experience litigating consumer protection class actions”).

5. Furthermore, I recently served as special counsel for the State of Ohio in *State of Ohio ex rel. Dave Yost Ohio Attorney General v. Monsanto*, No. A1801237 (Hamilton County Court of Common Pleas, Ohio) (\$80 million settlement in 2022) and

¹ Markovits, Stock & DeMarco, LLC’s updated firm bio is attached as **Exhibit A**.

State of Ohio ex rel. Dave Yost Ohio Attorney General v. E.I. Du Pont de Nemours & Co., No. 18OT32 (Washington County Court of Common Pleas, Ohio) (\$110 million settlement in 2023; pending on appeal). I also participated in class counsel in several recent non-data privacy class action settlements including, *Shy v. Navistar International Corp.*, No. 92-cv-0333-WHR (S.D. Ohio) (class counsel for settlement valued at over \$742 million); *Walker v. Nautilus, Inc.*, No. 2:20-cv-3414-EAS (S.D. Ohio) (\$4.25 million settlement); *Bechtel v. Fitness Equipment Services, LLC*, No. 1:19-cv-726-KLL (S.D. Ohio) (\$3.65 million settlement); *Ryder v. Wells Fargo Bank, NA*, No. 1:2019-cv-00638 (S.D. Ohio) (member of class counsel in a \$12 million settlement on behalf of roughly 1,830 class members). I have extensive experience participating in other high-profile class action cases including, *In re Fannie Mae Securities Litigation*, No. 1:04-cv-1639 (D.D.C.) (assisted in representing the Ohio public pension funds as lead plaintiffs in a Section 10b-5 class action resulting in a \$153 million settlement); *In re NCAA Student-Athlete Name & Likeness Licensing Litigation*, No. 4:09-cv-1967, (N.D. Cal.); *see also O'Bannon v. NCAA*, 802 F.3d 1049 (9th Cir. 2015) (served as counsel for NCAA, Olympic, and NBA legend Oscar Robertson in antitrust claims against the National Collegiate Athletic Association, Collegiate Licensing Company, and Electronic Arts resulting in a \$40 million settlement with Electronic Arts and Collegiate Licensing Company and the Court issuing a permanent injunction against the NCAA for unreasonably restraining trade in violation of antitrust law); *In re Toyota Motor Corp., Unintended Acceleration Marketing, Sales Practices & Products Liability Litigation*, MDL No. 2151 (C.D. Cal.) (served as a member of counsel for the economic loss class action plaintiffs against Toyota that resulted in a settlement

valued at \$1.6 billion); and *Williams v. Duke Energy*, No. 1:08-cv-0046 (S.D. Ohio) (served as counsel for plaintiffs in a complex antitrust and RICO class action resulting an \$80.875 million settlement).

EFFORTS IN THIS LITIGATION

6. I have followed my firm's participation in this matter since mid-2022, including,

- a. investigating the case;
- b. researching appropriate causes of action;
- c. communicating with class members and certain class representatives;
- d. vetting class members for the purposed of serving as class representatives;
- e. drafting an underlying class action complaint and participating in the compiling of a consolidated class action complaint;
- f. researching and drafting sections of the response to Novant's motion to dismiss;
- g. discussing case strategy with other plaintiffs' counsel;
- h. reviewing expert findings on the information disclosed through Novant's use of the pixel tracking tools;
- i. participating in settlement discussions including attending the mediation with Mediator Hunter Hughes;
- j. participating in the finalizing of the settlement including editing and finalizing the settlement agreement, finalizing the draft notices, and

drafting/finalizing the motion for preliminary approval of class action settlement;

- k. communicating with P&N, the settlement administrator, about the settlement and the notice plan;
- l. reviewing the settlement with certain class representatives; and,
- m. assisting in the drafting of the motion for attorneys' fees, expenses, and class representative services awards.

7. A summary indicating the amount of time expended by my firm's partners, associates, and professional support staff as of March 17, 2024 involved in the litigation are set forth below:

Timekeeper	Years of Practice	Hourly Rate	Hours	Lodestar
Terence R. Coates (Partner)	15	\$850	259.2	\$220,320.00
Justin C. Walker (Attorney)	19	\$795	22.6	\$17,967.00
Dylan J. Gould (Attorney)	6	\$590	44.9	\$26,491.00
Jonathan Deters (Attorney)	9	\$590	26	\$15,340.00
Spencer D. Campbell (Attorney)	2	\$430	20.9	\$8,987.00
Jenna Pottschmidt (Paralegal)		\$190	4	\$760.00
Brandy Mathews (Paralegal)		\$190	.5	\$95.00
			378.1	\$289,960.00

8. The lodestar calculation is based on my firm's current billing rates and was prepared from contemporaneous time records regularly prepared and maintained by my firm. The hourly rates for my firm's partners, attorneys, and professional support staff included are the usual and customary hourly rates charged for services in similar complex class action litigation.

9. In addition, my firm has submitted fee petitions in other cases that have reported hourly rates at amounts comparable to those sought herein, and courts have approved the requested attorneys' fees where these hourly rates were utilized.

10. My firm followed the billing protocol in effect for all counsel billing time to this case and conducted internal audits to ensure that the lodestar submitted includes only compensable work to prepare complaints, respond to motions to dismiss, evaluate and consult with experts, attend the mediation, consult with clients to provide informal discovery and review information provided with defendants, and to draft the settlement documents. In addition, after the mediation, we spent numerous hours negotiating on terms for the settlement and then preparing all of the settlement related documents. Expense items are billed separately and are not duplicated in my firm's lodestar. Class Counsel will continue to expend substantial time and effort pursuing this matter on behalf of Plaintiffs and the Settlement Class through final approval and the finalization of the distribution of settlement benefits to the Settlement Class.

11. The expenses my firm incurred in litigating this action are reflected in the books and records of my firm. These books and records are prepared from expense vouchers, receipts, and check records and other source materials and accurately reflect the expenses incurred.

12. My firm's expenses are summarized below. These expenses were reasonable and necessarily incurred for the benefit of the Settlement Class.

Expense Description	Total
Pro Hac Application	\$25.00
Copies	\$12.30
Research	\$0.92
Travel	\$806.62
TOTAL	\$844.84

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 18, 2024

/s/ Terence R. Coates
Terence R. Coates

EXHIBIT A



MARKOVITS, STOCK & DeMARCO, LLC

Markovits, Stock & DeMarco, LLC is a boutique law firm whose attorneys have successfully represented clients in some of the largest and most complex legal matters in U.S. history. Our deep and varied experience extends from representing businesses, public pension funds, and individuals in federal and state courts across the nation, to successfully arguing appeals at the highest levels of the legal system – including prevailing before the United States Supreme Court. This broad-based litigation and trial expertise, coupled with no overstaffing and overbilling that can typify complex litigation, sets us apart as a law firm. But expertise is only part of the equation.

“Legal success comes only from recognizing a client’s goals and being able to design and effectively execute strategies that accomplish those goals. We understand that every client is different, which is why we spend so much time learning what makes them tick.”

As the business world becomes increasingly complex, you need to be able to trust your law firm to help you make the right decisions. Whether you seek counsel in resolving a current conflict, avoiding a future conflict, or navigating the sometimes choppy state and local government regulatory waters, the lawyers at Markovits, Stock & DeMarco have both the experience and track record to meet your legal needs.

BILL MARKOVITS

Bill Markovits practices in the area of complex civil litigation, with an emphasis on securities, antitrust, RICO, and False Claims Act cases. Bill began his career as a trial lawyer at the U.S. Department of Justice Antitrust Division in Washington, D.C. He continued a focus on antitrust after moving to Cincinnati, where he became an adjunct professor of antitrust law at the University of Cincinnati Law School. Bill has been involved in the past in a number of notable cases, including: the Choice Care securities, antitrust and RICO class action in which the jury awarded over \$100 million to a class of physicians; a fraud/RICO case on behalf of The Procter & Gamble Company, which resulted in a settlement of \$165 million; an eleven year antitrust and RICO class action against Humana, including appeals that reached the United States Supreme Court, which culminated in a multi-million dollar settlement; and a national class action against Microsoft, in which he was chosen from among dozens of plaintiffs' attorneys to depose Bill Gates. More recently, Bill was: a lead counsel for plaintiffs in the Fannie Mae Securities Litigation that settled for \$153 million; a lead counsel for plaintiffs in a class action against Duke Energy that settled for \$80.75 million; and lead counsel for plaintiff in *Collins v. Eastman Kodak*, where he successfully obtained a preliminary injunction against Kodak on an antitrust tying claim. Based upon the result in *Collins*, Bill was a 2015 finalist in the American Antitrust Institute's Antitrust Enforcement Awards under the category "Outstanding Antitrust Litigation Achievement in Private Law Practice."

Bill has received a number of awards and designations, including current and past designations as a "Best Lawyer in America" in the fields of antitrust and commercial litigation.

Education:

Harvard Law School, J.D. (1981), cum laude

Washington University, A.B. (1978), Phi Beta Kappa

Significant and Representative Cases:

- *Collins v. Eastman Kodak*, United States District Court, Southern District of Ohio. Lead counsel representing Collins in antitrust tying claim, resulting in preliminary injunction against Kodak.
- *In Re Federal National Mortgage Association Securities, Derivative, and "ERISA" Litigation*, United States District Court, District of Columbia. Co-lead counsel representing Ohio pension funds in securities class action that settled for \$153 million.
- *Ohio Employees Retirement System v. Federal Home Loan Mortgage, aka Freddie Mac, et al.*, United States District Court, Northern District of Ohio, Eastern Division. Special counsel representing Ohio pension fund in securities class action.
- *Williams v. Duke Energy et al.*, United States District Court, Southern District of Ohio. Representing class of energy consumers against energy provider in complex antitrust and RICO class action that settled for \$80.75 million.
- *In Re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, United States District Court, Central District of California. Former member of economic loss lead counsel committee, representing class of consumers in litigation relating to sudden acceleration.
- *In Re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, United States District Court, Eastern District of Louisiana. RICO workgroup coordinator in class action resulting from oil spill.
- *In Re Microsoft Corp. Litigation*, United States District Court, District of Maryland. Member of co-lead counsel firm in antitrust class action.
- *Procter & Gamble v. Amway Litigation*, United States District Court, Southern District of Texas, at

Markovits Stock DeMarco LLC
119 E. Court Street, Suite 530
Cincinnati, Ohio 45202

Business 513.651.3700

MSDLegal.com

Houston; United States District Court, District of Utah, at Salt Lake City. Member of trial team representing Procter & Gamble in obtaining jury verdict against Amway distributors relating to spreading of false business rumors.

- *United States ex rel. Brooks v. Pineville Hospital*, United States District Court, Eastern District of Kentucky. One of the lead counsel in successful False Claims Act litigation.
- *Procter & Gamble v. Bankers' Trust Litigation*, United States District Court, Southern District of Ohio. Co-counsel in successful \$165 million settlement; developed the RICO case.
- *United States ex rel. Watt v. Fluor Daniel*, United States District Court, Southern District of Ohio. Co-lead counsel of successful False Claims Act case.
- *Forsyth v. Humana*, United States District Court, District of Nevada. Represented class of consumers in antitrust and RICO class action; successfully argued antitrust appeal; co-chaired successful Supreme Court appeal on RICO.
- *In Re Choice Care Litigation*, United States District Court, Southern District of Ohio, Western Division. Trial attorney on largest antitrust/RICO/securities verdict.

Presentations & Publications:

- "Implications of Sixth Circuit *Collins Inkjet Corp. v. Eastman Kodak Co. Decision*," American Bar Association panel discussion, December 10, 2015
- "Defining the Relevant Market in Antitrust Litigation," Great Lakes Antitrust Seminar, October 29, 2010
- "Beyond Compensatory Damages – Tread, RICO and The Criminal Law Implications," HarrisMartin's Toyota Recall Litigation Conference, Part II, May 12, 2010
- "The Racketeer Influenced and Corrupt Organizations Act (RICO)," HarrisMartin's Toyota Recall Litigation Conference, March 24, 2010
- "The False Claims Act: Are Healthcare Providers at Risk?," presentation to Robert Morris College Second Annual Health Services Conferences, Integrating Health Services: Building a Bridge to the 21st Century, Moon Township, PA, October 9, 1997
- "The Federal False Claims Act: Are Health Care Providers at Risk?," (Co-Speaker), Ohio Hospital Association, April, 1996
- "A Focus on Reality in Antitrust," Federal Bar News & Journal, Nov/Dec 1992
- "Using Civil Rico and Avoiding its Abuse," Ohio Trial, William H. Blessing, co-author, Summer 1992
- "Antitrust in the Health Care Field," a chapter published in *Legal Aspects of Anesthesia*, 2nd ed., William H. L. Dornette, J.D., M.D., editor
- *Antitrust Law Update, National Health Lawyers Health Law Update and Annual Meeting (Featured Speaker)*, San Francisco, California, 1989

Affiliations:

- American Association for Justice
- American Bar Association
- American Trial Lawyers Association
- Cincinnati Bar Association
- District of Columbia Bar Association (non-active)
- Hamilton County Trial Lawyers Association
- National Health Lawyers Association
- Ohio State Bar Association
- Ohio Trial Lawyers Association

Courts Admitted:

- District of Columbia (1981)
- State of Ohio (1983)
- United States District Court, Southern District of Ohio (1983)
- U.S. Court of Appeals, 6th Circuit (1991)
- U.S. Court of Appeals, 9th Circuit (1995)
- U.S. Supreme Court, United States of America (1998)
- United States District Court, Northern District of Ohio (2008)

PAUL M. DEMARCO

Paul M. De Marco is a founding member of Markovits, Stock & DeMarco, LLC. He is an Appellate Law Specialist certified by the Ohio State Bar Association and has handled more than 100 appellate matters, including cases before the Supreme Court of the United States, six federal circuits, and five state supreme courts.

Paul's practice also focuses on class actions and other complex litigation. During his 25 years in Cincinnati, Paul has been actively involved in successful litigation related to the U.S. Department of Energy's Fernald nuclear weapons plant, the Lucasville (Ohio) prison riot, Lloyd's of London, defective Bjork-Shiley heart valves, Holocaust-related claims against Swiss and Austrian banks, the Bankers Trust derivative scheme, Cincinnati's Aronoff Center, the San Juan DuPont Plaza Hotel fire, the Procter & Gamble Satanism rumor, the Hamilton County (Ohio) Morgue photograph scandal, defective childhood vaccines, claims arising from tire delamination and vehicle roll-over, racial hostility claims against one of the nation's largest bottlers, fiduciary breach claims against the nation's largest pharmacy benefits manager, and claims arising from the heatstroke death of NFL lineman Korey Stringer.

Education:

College of Wooster (B.A., 1981)

University of the Pacific, McGeorge School of Law (J.D. with distinction, 1983)

University of Cambridge (1985)

Significant and Representative Appeals:

- *Arthur Anderson LLP v. Carlisle*, 556 U.S. 624, 129 S.Ct. 1896 (2009): In a case involving allegations of a fraudulent tax shelter and accounting and legal malpractice, the Supreme Court of the United States resolved the issue of the rights of non-parties to arbitration clauses to enforce them against parties, which had divided the circuits.
- *Williams v. Duke Energy International, Inc.*, 681 F.3d 788 (6th Cir. 2012): In a case brought as a class action by a utility's ratepayers for selective payment of illegal rebates to certain ratepayers, the United States Court of Appeals for the Sixth Circuit reversed a district court's dismissal of the excluded ratepayers' claims that the utility violated the RICO statute, the Robinson-Patman Act, and the state corrupt practices act.
- *State of Ohio ex rel. Bd. of State Teachers Retirement Sys. of Ohio v. Davis*, 113 Ohio St.3d 410, 865 N.E.2d 1289 (2007): The Supreme Court of Ohio upheld the appellate court's issuance of the extremely rare writ of procedendo commanding the trial judge to proceed with a trial on claims he mistakenly believed the previous jury had resolved.
- *Chesher v. Neyer*, 477 F.3d 784 (6th Cir. 2007): The Sixth Circuit affirmed the district court's rejection of qualified immunity defenses raised by the Hamilton County (Ohio) coroner, his chief deputy, the coroner's administrative aide, a staff pathologist, and a pathology fellow in connection with the Hamilton County Morgue photo scandal.
- *State of Ohio ex rel. CNG Fin'l Corp. v. Nadel*, 111 Ohio St.3d 149, 855 N.E.2d 473 (2006): The Supreme Court of Ohio affirmed the appellate court's refusal to issue a writ of procedendo commanding the trial judge to halt injunctive proceedings and decide an arbitration issue.
- *Smith v. North American Stainless, L.P.*, 158 F. App'x. 699 (6th Cir. 2006): Rejecting a steel manufacturer's "up-the-ladder" immunity defense, the United States Court of Appeals for the Sixth Circuit reversed the district court's dismissal of a wrongful claim brought by the widow and estate of a steel worker killed on the job.
- *Procter & Gamble Co. v. Haugen*, 427 F.3d 727 (10th Cir. 2005): The United States Court of Appeals for the Tenth Circuit reversed the district court's dismissal of Procter & Gamble's Lanham Act claims, paving the way for a \$19.25 million jury verdict in its favor.

- *Roetenberger v. Christ Hospital*, 163 Ohio App.3d 555, 839 N.E.2d 441 (2005): In this medical malpractice action for wrongful death, the Ohio court of appeals reversed the jury verdict in the physician's favor due to improper arguments by his attorney and instructional error by the trial court.
- *City of Cincinnati v. Beretta U.S.A. Corp.*, 95 Ohio St.3d 416, 768 N.E.2d 1136 (2002): In this landmark decision on public nuisance law, the Supreme Court of Ohio held that a public nuisance action could be maintained for injuries caused by a product — in this case, guns — if the design, manufacture, marketing, or sale of the product unreasonably interferes with a right common to the general public.
- *Norgard v. Brush Wellman, Inc.*, 95 Ohio St.3d 165, 766 N.E.2d 977 (2002): In an employee's intentional tort action alleging that his employer subjected him to long-term beryllium exposure, the Supreme Court of Ohio ruled that a cause of action for an employer intentional tort accrues when the employee discovers, or by the exercise of reasonable diligence should have discovered, the workplace injury and — here's the ground-breaking part of the holding — the wrongful conduct of the employer.
- *Wallace v. Ohio Dep't of Commerce*, 96 Ohio St.3d 266, 773 N.E.2d 1018 (2002): In overturning the dismissal of a suit against the state fire marshal for negligently inspecting a fireworks store that caught fire killing nine people, the Supreme Court of Ohio held for the first time that the common-law public-duty rule cannot be applied in cases against the state in the Ohio Court of Claims.

Courts Admitted:

- | | |
|--------------------------------------|--|
| • Ohio | • U.S. Court of Appeals, 10th Circuit |
| • California | • U.S. District Court, Southern District of Ohio |
| • Supreme Court of the United States | • U.S. District Court, Northern District of Ohio |
| • U.S. Court of Appeals, 1st Circuit | • U.S. District Court, Eastern District of California |
| • U.S. Court of Appeals, 4th Circuit | • U.S. District Court, Central District of California |
| • U.S. Court of Appeals, 5th Circuit | • U.S. District Court, Southern District of California |
| • U.S. Court of Appeals, 6th Circuit | • U.S. Court of Federal Claims |
| • U.S. Court of Appeals, 7th Circuit | |
| • U.S. Court of Appeals, 9th Circuit | |

Since 1994, Paul has worked to promote professional responsibility among lawyers, serving first as a member and eventually the chair of the Cincinnati Bar Association Certified Grievance Committee, and since 2008 as a member of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio.

He also is a member of many legal organizations, including the Federal Bar Association, Ohio State Bar Association, Cincinnati Bar Association, American Bar Association, ABA Council of Appellate Lawyers, and the Cincinnati Bar Association's Court of Appeals Committee.

Paul was one of the founders of the Collaborative Law Center in Cincinnati, a member of Cincinnati's Citizens Police Review Panel (1999-2002), and a member of Cincinnati CAN and its Police and Community Subcommittee following the 2001 riots.

He currently serves on the boards of the Ohio Justice and Policy Center and the Mercantile Library and on the advisory committees of the Fernald Community Cohort and the Fernald Workers' Medical Monitoring Program.

TERENCE R. COATES

Terry Coates is Markovits, Stock & DeMarco's managing partner. His legal practice focuses on personal injury law, sports & entertainment law, business litigation and class action litigation. Mr. Coates is currently participating as a member of plaintiffs' counsel in the over 60 data breach cases pending around the country, including serving as co-lead counsel for plaintiff in *Migliaccio v. Parker Hannifin Corp.*, No. 1:22-CV-00835 (N.D. Ohio) (court-appointed co-lead counsel for preliminarily-approved \$1.75 million class action settlement); *Lutz v. Electromed, Inc.*, No. 0:21-cv-02198 (D. Minn.) (court-appointed co-lead counsel for preliminarily-approved class action settlement); *Abrams v. Savannah College of Art & Design*, No. 1:22-CV-04297 (N.D. Ga.) (court-appointed co-lead counsel for preliminarily-approved class action settlement); *John v. Advocate Aurora Health, Inc.*, No. 22-CV-1253-JPS (E.D. Wis.) (court-appointed interim co-lead class counsel); *In re U.S. Vision Data Breach Litigation*, No. 22-cv-06558 (D. N.J.) (same); *Tucker v. Marietta Area Health Care, Inc.*, No. 2:22-cv-00185 (S.D. Ohio) (same); *Rodriguez v. Professional Finance Company, Inc.*, No. 1:22-cv-1679 (D. Colo.) (same); *Sherwood v. Horizon Actuarial Services, LLC*, No. 1:22-cv-1495 (N.D. Ga.; court-appointed interim class counsel); *Tracy v. Elekta, Inc.*, No. 1:21-cv-02851-SDG (N.D. Ga.; court-appointed interim class counsel).

Education:

Thomas M. Cooley Law School, J.D. (2009)

Wittenberg University, B.A. (2005)

Representative Cases:

- *Bechtel v. Fitness Equipment Services, LLC*, No. 1:19-cv-726-KLL (S.D. Ohio) (\$3.65 million common fund settlement finally approved on September 20, 2022);
- *Bowling v. Pfizer, Inc.*, Case No. C-1-95-256 (S.D. Ohio) (Class Counsel for recipients of defective mechanical heart valves including continued international distribution of settlement funds to remaining class members);
- *Collins Inkjet Corp. v. Eastman Kodak Company*, Case No. 1:13-cv-0664 (S.D. Ohio) (trial counsel for Collins in an antitrust tying claim resulting in a preliminary injunction against Kodak – a decision that was affirmed by the Sixth Circuit Court of Appeals: *Collins Inkjet Corp. v. Eastman Kodak Co.*, 781 F.3d 264 (6th Cir. 2015));
- *Day v. NLO, Inc.*, Case No. C-1-90-67 (S.D. Ohio) (Class Counsel for certain former workers at the Fernald Nuclear weapons facility; the medical monitoring program continues);
- *In re Fannie Mae Securities Litigation*, Case No. 1:04-cv-1639 (D.D.C.) (represented Ohio public pension funds as Lead Plaintiffs in Section 10b securities class action litigation resulting in a \$153 million court-approved settlement);
- *In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, & Products Liability Litigation*, MDL No. 2151 (C.D. Cal.) (represented plaintiffs and prepared class representatives for deposition testimony resulting in a court-approved settlement valued in excess of \$1.5 billion);
- *In re NCAA Student-Athlete Name & Likeness Licensing Litigation*, Case No. 09-1967 (N.D. Cal.) (represented NCAA, Olympic, and NBA legend, Oscar Robertson, in antitrust claims against the National Collegiate Athletic Association (NCAA), Collegiate Licensing Company (CLC), and Electronic Arts (EA) leading to a \$40 million settlement with EA and CLC and the Court issuing a permanent injunction against the NCAA for unreasonably restraining trade in violation of antitrust law);
- *Linneman v. Vita-Mix Corp.*, Case No. 14-cv-748, (S.D. Ohio) (Class Counsel for a nationwide class of Vita-Mix blender consumers resulting in a nationwide settlement);
- *Ryder v. Wells Fargo Bank, N.A.*, No. 1:2019-cv-00638 (S.D. Ohio) (member of class counsel in a \$12 million settlement on behalf of roughly 1,830 class members);

- *Shy v. Navistar International Corp.*, No. 92-cv-0333-WHR (S.D. Ohio) (class counsel for a class action settlement valued at over \$742 million);
- *Walker v. Nautilus, Inc.*, No. 2:20-cv-3414-EAS (S.D. Ohio) (\$4.25 million common fund settlement finally approved on June 28, 2022);
- *Williams v. Duke Energy*, Case No. 1:08-cv-00046 (S.D. Ohio) (representing class of energy consumers against energy provider in complex antitrust and RICO class action resulting in the court granting final approval of an \$80.875 million settlement); and,
- *Ohio Public Employees Retirement System v. Federal Home Loan Mortgage ("Freddie Mac")*, Case No. 4:08-cv-0160 (N.D. Ohio) (Special counsel for Ohio public pension funds as Lead Plaintiffs in Section 10b-5 securities class action litigation).

Community Involvement:

- Cincinnati Academy of Leadership for Lawyers (CALL), Class XXI, *Participant* (2017)
- Cincinnati Chamber of Commerce C-Change Class 9, *Participant* (2014)
- Cincinnati Chamber of Commerce, *Ambassador* (2014)
- Cincinnati Athletic Club, *President* (2015-2017)
- Cincinnati Athletic Club, *Vice President* (2014-2015)
- Cincinnati Bar Association, Board of Trustees, *Trustee* (2019-present)
- Cincinnati Bar Association, Board of Trustees, *Executive Committee* (2021-present)
- Cincinnati Bar Association, *Membership Services & Development Committee* (2014-present)
- Cincinnati Bar Association, *Run for Kids Committee* (2009-2014)
- Cincinnati Bar Association, *Social Committee* (2011-2014)
- Clermont County Humane Society, *Board Member* (2014-2017)
- Clermont County Humane Society, *Legal Adviser* (2017-present)
- Potter Stewart Inn of Court, *Executive Director* (2021-present)
- Summit Country Day High School, *Mock Trial Adviser* (2013-2016)
- St. Peter in Chains, Cathedral, Parish Council (2014-2017)

Recognitions:

- Super Lawyers, Rising Star (2014 – present)
- Best Lawyers in America, Commercial Litigation (2020-present)
- Wittenberg University Outstanding Young Alumnus Award (2014)
- Cincinnati Bar Association, Young Lawyers Section Professionalism Award (2015)
- JDRF Bourbon & Bow Tie Bash, *Young Professional (Volunteer) of the Year* for the Flying Pig Marathon (2016)
- Cincinnati Business Courier, Forty Under 40 (2019)
- Cincinnati Cystic Fibrosis Foundation, Cincinnati's Finest Honoree (2020)

Courts Admitted:

- State of Ohio (2009)
- United States District Court, Southern District of Ohio (2010)
- United States District Court, Northern District of Ohio (2010)
- United States District Court, Eastern District of Michigan (2021)
- United States District Court, District of Colorado (2022)
- United States District Court, Eastern District of Wisconsin (2022)
- United States District Court, Western District of Michigan (2023)
- United States Court of Appeals, Sixth Circuit (2018)

JUSTIN C. WALKER

Justin C. Walker is Of Counsel at Markovits, Stock & DeMarco. Justin's practice areas are focused on complex civil litigation and constitutional law, with an emphasis on consumer fraud and defective products. Before joining Markovits, Stock & DeMarco in April 2019, Justin practiced at the Finney Law Firm, a boutique law firm specializing in complex litigation and constitutional law. At the beginning of his legal career, Justin served as a judicial extern for Senior United States District Judge Sandra S. Beckwith before taking a full-time position as a law clerk and magistrate in the Hamilton County Ohio Court of Common Pleas for the Honorable Norbert A. Nadel. After completing his clerkship, Justin took a position as a prosecutor, serving as first chair for multiple jury trials. Justin then entered private practice, shifting his practice to focus on litigation matters.

Education:

University of Cincinnati, J.D. (2005)

Miami University, B.S. (2001)

Courts Admitted:

- State of Ohio (2005)
- U.S. Court of Appeals, 6th Circuit (2017)
- U.S. District Court, Southern District of Ohio (2008)
- U.S. Bankruptcy Court, Southern District of Ohio (2009)

Representative Cases:

- *Linneman v. Vita-Mix Corp.*, Case No. 15-cv-748, United States District Court, Southern District of Ohio (Co-Class Counsel for a nationwide class of Vita-Mix blender consumers resulting in a nationwide settlement).
- *Baker v. City of Portsmouth*, Case No. 1:14-cv-512, 2015 WL 5822659 (S.D. Ohio Oct. 1, 2015) (Co-Counsel for a class of property owners, the Court ruled that City violated the Fourth Amendment when it required property owners to consent to a warrantless inspection of their property or face a criminal penalty where not valid exception to the warrant requirement exists).
- *E.F. Investments, LLC v. City of Covington, Kentucky*, Case No. 17-cv-00117-DLB-JGW, United States District Court, Eastern District of Kentucky (Lead Counsel on case brought on behalf of local property owners, contending that City's rental registration requirements violated the Fourth Amendment resulting in a settlement).
- *State of Ohio ex rel. Patricia Meade v. Village of Bratenahl*, 2018-04409, Supreme Court State of Ohio (Co-Counsel on behalf of local taxpayer contending that Defendant's violated Ohio Open Meetings Law).
- *Dawson v. Village of Winchester*, United States District Court, Southern District of Ohio (Lead Counsel represented Plaintiff claiming Federal Civil Rights violations due to unconstitutional arrest and detainment).

Affiliations and Presentations:

- Cincinnati Bar Association
- Clermont County Bar Association
- American Association for Justice
- "Municipal Bankruptcy: Chapter 9 – Should Cincinnati Consider Filing for Bankruptcy?"
- "Ohio CLE Introduction to Bankruptcy for Lawyers CLE"

CHRISTOPHER D. STOCK

Chris's legal practice focuses on securities class action and multi-district products liability litigation, as well as appellate advocacy. Serving as a judicial law clerk for Ohio Supreme Court Justice Terrence O'Donnell gave Chris invaluable insight into how courts synthesize and deconstruct legal arguments. Since then, Chris has briefed and argued numerous cases before the United States Court of Appeals for the Sixth Circuit, the Ohio Supreme Court, and Ohio appellate courts, including obtaining a rare summary reversal from the United States Supreme Court.

Chris also served as both Deputy First Assistant Attorney General and Deputy State Solicitor for Ohio Attorney General Jim Petro. In these positions, Chris was principal counsel to the Attorney General on a wide variety of legal and policy-oriented issues, including numerous constitutional and regulatory matters arising from state agencies, boards, and commissions. Prior to his service in state government, Chris was an attorney at a 500-lawyer nationally-recognized law firm.

He received multiple designations as an Ohio Super Lawyers "Rising Star." This distinction is awarded to less than 2.5 percent of Ohio attorneys under the age of 40.

Education:

The Ohio State University, Moritz College of Law, J.D. (2002)

The Ohio State University, BA (1997)

Significant Cases:

- *In re Fannie Mae Securities Litigation*, Case No. 1:04-cv-1639 (D.D.C.). Representing Ohio public pension funds as Lead Plaintiffs in Section 10b-5 securities class action litigation.
- *Ohio Public Employees Retirement System v. Freddie Mac, et al.*, Case No. 4:08-cv-160 (N.D. Ohio). Representing Ohio public pension funds as Lead Plaintiffs in Section 10b-5 securities class action litigation.
- *Williams v. Duke Energy*, Case No.: 1:08-CV-00046 (S.D. Ohio). Representing class of energy consumers against energy provider in complex antitrust and RICO class action.
- *Slaby v. Wilson*, Hamilton County Court of Common Pleas. Lead trial counsel representing two private individuals who were falsely accused by a County Commissioner of murdering their child and covering up the child's death (as well as sexual abuse of child).
- *Kelci Stringer, et al. v. National Football League, et al.*, United States District Court, Southern District of Ohio, Western Division. Represented professional football player against NFL and helmet manufacturer in wrongful death/products liability litigation related to professional football player's death.
- *Susan B. Anthony List v. Driehaus*, United States District Court, Southern District of Ohio, Western Division. Represented former Congressman in defamation action against organization who published false statements about former Congressman's voting record and alleged influence over organization's commercial activities.
- *Mitchell v. Esparza*, Case No. 02-1369 (United States Supreme Court). Obtained summary reversal of Sixth Circuit decision on Eighth Amendment capital sentencing issue.
- *Cleveland Bar Association v. CompManagement, Inc.*, Case No. 04-0817 (Ohio Supreme Court). Represented the State of Ohio as amicus in landmark workers' compensation lawsuit.

Presentations:

- Class Action Boot Camp: The Basics and Beyond (2012).
- Harris Martin Toyota Sudden Unintended Acceleration Litigation Conference: TREAD Act Liability and Toyota (2010).
- Harris Martin BP Oil Spill Litigation Conference: The RICO Act's Application to the BP Oil Spill (2010).

Affiliations:

- Ohio State Bar Association
- Cincinnati Bar Association

Courts Admitted:

- State of Ohio (2002)
- United States District Court, Southern District of Ohio (2003)
- Sixth Circuit Court of Appeals, Ohio (2003)
- United States District Court, Northern District of Ohio (2007)

DYLAN J. GOULD

Dylan is an associate attorney at Markovits, Stock & DeMarco. Dylan's practice primarily focuses on class action and complex civil litigation with an emphasis on cases involving consumer fraud and data privacy. He also has experience with matters related to sports & entertainment, personal injury, commercial law, civil conspiracy, and civil litigation under the RICO Act. At the University of Cincinnati College of Law, where he spent multiple semesters on the Dean's Honors List, Dylan was selected to the Trial Practice and Moot Court teams, participating in mock trial and appellate court competitions with law students across the country. Upon graduation, Dylan joined Markovits, Stock & DeMarco, where he quickly gained valuable experience in nearly every facet of the litigation process while skillfully guiding several cases to final judgment, including as a court appointed member of class counsel in multiple actions gaining final approval of class action settlement. In recognition of his achievements, Dylan was named an Ohio Super Lawyers Rising Star in 2021 and 2023. Aside from his litigation practice, Dylan is also a Certified Contract Advisor with the National Football League Players Association.

Education:

University of Cincinnati, J.D. (2018)

University of Colorado at Boulder, B.A. (2015)

Courts Admitted:

- State of Ohio (2018)
- United States District Court, Southern District of Ohio (2019)
- United States District Court, Northern District of Ohio (2022)
- United States District Court, Eastern District of Wisconsin (2022)
- United States Court of Appeals, Sixth Circuit (2023)

Representative Cases:

- *Compound Property Management LLC v. Build Realty, Inc.*, No. 1:19-CV-133, 2023 WL 2140981 (S.D. Ohio Feb. 21, 2023) (granting contested class certification of claims related to complex real estate lending scheme in civil RICO action and appointing Mr. Gould as a member of class counsel);
- *Voss v. Quicken Loans*, No. A 2002899, 2023 WL 1883124 (Feb. 8, 2023 Ohio Com.Pl.) (granting contested class certification of action under Ohio Revised Code § 5301.36 and appointing Mr. Gould as member of class counsel);
- *Benedetto v. The Huntington National Bank*, No. A1903532 (Hamilton County, Ohio Court of Common Pleas) (served as member of class counsel in class action related to untimely mortgage releases that recently received final approval of class action settlement);
- *Engle v. Talbert House*, No. A2103650 (Hamilton County Court of Common Pleas, Ohio) (court appointed member of class counsel in data breach action that recently received final approval of class action settlement)
- *Lutz v. Electromed, Inc.*, No. 21-cv-2198 (D. Minn.) (court appointed member of class counsel in data breach action that recently gained preliminary approval of \$825,000 settlement)
- *Reynolds v. Concordia University*, St. Paul, No. 0:21-CV-2560 (D. Minn.) (serving as a member of proposed class counsel for the plaintiff in case based on the unavailability of clinical experience for nursing students);

Affiliations:

Cincinnati Bar Association

Ohio State Bar Association

Markovits Stock DeMarco LLC
119 E. Court Street, Suite 530
Cincinnati, Ohio 45202

Business 513.651.3700

MSDLegal.com

JONATHAN T. DETERS

Jon is a Cincinnati native whose legal practice is focused on complex civil litigation, class action litigation, personal injury law, and sports & entertainment law. Jon has been a litigator since the start of his career, and his clients have included individuals, businesses, local governments, and government officials. Jon's experience serving as both plaintiff and defense counsel make him uniquely qualified and well-suited to represent individual and corporate clients in litigation. Jon has been designated as an Ohio Super Lawyers "Rising Star" from 2019-present, which is a distinction awarded to less than 2.5% of Ohio attorneys under the age of 40.

Before joining Markovits, Stock & DeMarco in January 2022, Jon practiced at Schroeder, Maundrell, Barbieri & Powers, an Ohio law firm specializing in civil litigation, personal injury, and constitutional law. While in law school, Jon served as a constable in the Hamilton County Ohio Court of Common Pleas for the Honorable Steven E. Martin and worked as law clerk at the Law Office of Steven R. Adams.

Education:

Salmon P. Chase School of Law at Northern Kentucky University, J.D. (2015)

Xavier University, Cincinnati, Ohio, Honors Bachelor of Arts (2012)

Representative Cases:

- *Baker v. Carnine*, No. 1:19-CV-60 (2022), United States District Court, Southern District of Ohio
- *Jones v. Vill. of Golf Manor*, No. 1:18-CV-403 (2020), United States District Court, Southern District of Ohio
- *Vaduva v. City of Xenia*, 780 F. App'x 331 (2019), United States Court of Appeals, Sixth Circuit
- *Gillispie v. Miami Twp.*, No. 3:13-CV-416 (2017), United States District Court, Southern District of Ohio
- *City of Mt. Healthy v. Fraternal Ord. of Police, Ohio Lab. Council, Inc.*, 101 N.E.3d 1163 (2017), Ohio First District Court of Appeals

Community Involvement:

- Cincinnati Bar Association, *Member*
- Ohio Bar Association, *Member*
- Boy Hope Girls Hope of Cincinnati, *Young Professionals Board Member*
- Board of Trustees of the New St. Joseph Cemetery, Cincinnati, Ohio, *Member*

Courts Admitted:

- State of Ohio
- United States District Court, Southern District of Ohio
- United States Court of Appeals, Sixth Circuit

EXHIBIT 3:
Declaration of Bryan Bleichner,
Chestnut Cambronne PA

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

In re: Novant Health, Inc.

LEAD Case No. 1:22-cv-00697
Consolidated with: 1:22-cv-
00700-WO-JEP; 1:22-cv-00709-
WO-JEP, and 1:22-cv-00799-
WO-JEP

**DECLARATION BRYAN L. BLEICHNER OF CHESTNUT CAMBRONNE PA IN
SUPPORT OF PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS'
FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS TO
CLASS REPRESENTATIVES**

1. I am an attorney with the law firm of Chestnut Cambronne PA. I am admitted in the State of Minnesota. I make this Declaration in support of Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards to Class Representatives (the "Motion").

2. My firm along with Milberg Coleman Bryson Phillips Grossman PLLC, Markovits, Stock, & DeMarco, LLC, Clayeo C. Arnold, A Professional Corp., Wolf Haldenstein Adler Freeman & Herz, LLP, and The Lyon Firm were approved by the Court as adequate counsel to represent the proposed Settlement Class.

3. I am a shareholder of Chestnut Cambronne PA, an officer of the Antitrust Section of the National Federal Bar Association, a featured speaker at the National American Bar Association, and a current member of the Sedona Conference Working Group Series. Mr. Bleichner has extensive experience serving as leadership or class counsel in numerous class action data breach cases including: *Jones v. ESO Solutions, Inc.*, Case No. 1:23-cv-01557(W.D. Tex); *In re Tift Regional Health Sys., Inc. Data Breach*

Litig., Case No. 2023-cv-0313 (GA. Sup. Ct. Tift County); *In re OrthoAlaska Data Breach Litig., LLC*, Case No. 3:23-cv-00242 (D. Alaska); *Edwards v. Memorial Heart Institute, LLC d/b/a The Chattanooga Heart Institute*, Case No. 1:2023-cv-00172 (E.D. Tenn.); *Owens-Brooks v. Dish Network Corp.*, Case No. 1:2023-cv-01168 (D. Col.); *In re R&B Corporation of Virginia d/b/a Credit Control Corporation*, Case No. 4:23-cv-00066-JKW-RJK (E.D. Va.); *In re Group Health Plan Litig.*, Case No. 23-cv-267-JWB/DJF (D. Minn.); *Rasmussen, et al., v. Uintah Basin Healthcare*, Case No. 23-cv-00322-HCN-CMR (D. Ut.); *Anderson v. Fortra*, Case No. 23-cv-00533 (D. Minn.); *Hale v. ARcare*, No. 3:22-cv-00117 (E.D. Ark.); *Hightower v. Receivables Performance Mgmt., LLC*, No. 2:22-cv-01683 (W.D. Wash.); *Johnson v. Yuma Regional Medical Center*, No. 2:22-cv-01061 (D. Ariz.); *In re Netgain Technology, LLC, Consumer Data Breach Litigation*, No. 21-cv-1210, (D. Minn.); *In re 20/20 Eye Care Network Inc. Data Breach Litigation*, No. 21-cv-61275-RAR (S.D. Fla.); *Baker v. ParkMobile, LLC*, No. 1:21-cv-02182 (N.D. Ga.); *In re Herff Jones Data Security Breach Litigation*, No. 1:21-cv-01329-TWP-DLP (S.D. Ind.); *In re EyeMed Vision Care, LLC Data Security Breach Litigation*, No. 1:21-cv-00036-DRC (S.D. Ohio); *In re Luxottica of America, Inc. Data Security Breach Litigation*, No. 1:20-cv-00908-MRB (S.D. Ohio); *Greenstate Credit Union v. Hy-Vee, Inc.*, No. 20-621-DSD-DTS (D. Minn.); *Village Bank v. Caribou Coffee Co., Inc.*, No. 0:19-cv-01640 (D. Minn.); *In re WaWa, Inc. Data Security Litigation*, No. 19-cv-6019-GEKP (E.D. Pa.); *In re Equifax, Inc., Customer Data Security Breach Litigation*, No. 17-md-2800-TWT (N.D. Ga.); *Midwest American Federal Credit Union v. Arby's Restaurant Group, Inc.*, No. 17-cv-00514-AT (N.D. Ga.); *Bellwether Cmty. Credit Union v. Chipotle Mexican Grill, Inc.*, No. 17-cv-1102 (D. Colo);

First Choice Fed. Credit Union v. The Wendy's Company, No. 2:16-cv-00506 (W.D. Pa.); *Veridian Credit Union v. Eddie Bauer LLC*, No. 2:17-cv-00356 (W.D. Wash.); *In re The Home Depot, Inc., Customer Data Security Breach Litigation*, No. 1:14-md-02583 (TWT) (N.D. Ga.); *In re Target Corporation Customer Data Security Breach Litigation*, No. 0:14-md-02522-PAM-JJK (D. Minn.); *Lutz v. Electromed, Inc.*, No. 70-CV-21-11814 (D. Minn.); *Thomas v. Pawn America Minnesota, LLC*, No. 0:21-cv-02554 (D. Minn.); and *Seabrian v. St. Joseph's/Candler Health System, Inc.*, No. STCV21-01652 (State Court of Chatham County, Georgia).

4. I also have experience serving as leadership or class counsel in non-data-breach class actions, including: *Walker v. Nautilus, Inc.*, No. 20-cv-3414-EAS-EPD (S.D. Ohio); *Howard v. Life Time Fitness, Inc.*, No. 27-cv-20-10513 (Minn. 2020); *Barclay v. Icon Health & Fitness, Inc.*, No. 19-cv-02970-ECT-DTS (D. Minn.); *In re Resideo Technologies, Inc. Securities Litigation*, No. 19-cv-02863-WMW-KMM (D. Minn.); *In re Pork Antitrust Litigation.*, No. 18-cv-1776-JRT-HB (D. Minn.); *In re DPP Beef Litigation*, No. 20-cv-1319-JRT/HB (D. Minn.); *Bruner v. Polaris Industries Inc.*, No. 18-cv-00939-WMW-DTS (D. Minn.); *In re FedLoan Student Loan Servicing Litigation*, No. 2:18-md-02833-CDJ (E.D. Pa.); *Travis v. Navient Corp.*, No. 17-cv-04885-JFB-GRB (E.D.N.Y.); *Delamarter v. Supercuts, Inc.*, No. 19-3158-DSD-TNL (D. Minn.); and *Christian v. National Hockey League*, No. 0:14-md-02551-SRN-JSM (D. Minn.).

5. A summary indicating the amount of time expended by the partners, associates, and professional support staff as of March 19, 2024 involved in the litigation is set forth below:

Timekeeper	Rate	Hours	Cumulative Value
Bryan L. Bleichner	\$950- \$1050	106.7	\$108,155.00
Philip J. Krzeski	\$550-\$625	232.5	\$135,921.00
Gary K. Luloff	\$595	19.3	\$11,483.50
Christopher P. Renz	\$875	1.4	\$1,225.00
Total		359.9	\$256,784.50

6. The lodestar calculation is based on my firm's current billing rates and was prepared from contemporaneous time records regularly prepared and maintained by my firm. The hourly rates for my firm's partners, attorneys, and professional support staff included are the usual and customary hourly rates charged for services in similar complex litigation.

7. In addition, my firm has submitted fee petitions in other cases that have reported hourly rates at amounts comparable to those sought herein, and courts have approved an award of attorneys' fees in such cases.

8. My firm followed the billing protocol in effect for all counsel billing time to this case and conducted internal audits to ensure that the lodestar submitted includes only compensable work to prepare complaints, respond to motions to dismiss, evaluate and consult with experts, attend the mediation, consult with clients to provide informal discovery and review information provided with defendants. In addition, after the mediation, we spent numerous hours negotiating on terms for the settlement and then

preparing all of the settlement related documents. Expense items are billed separately and are not duplicated in my firm's lodestar.

9. The expenses my firm incurred in litigating this action are reflected in the books and records of my firm. These books and records are prepared from expense vouchers, receipts, and check records and other source materials and accurately reflect the expenses incurred.

10. My firm's expenses are summarized below. These expenses were reasonable and necessarily incurred on behalf of the class as court and travel costs.

Disbursement	Total
Pro Hac Vice Application and Incidental Expenses	\$189.90
Travel to and from Greensboro, North Carolina for Final Approval Hearing	\$1,196.20
Hotel in Greensboro, North Carolina for Final Approval Hearing	\$242.41
Total	\$1,628.51

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 19, 2024

/s/ Bryan L. Bleichner
Bryan L. Bleichner

EXHIBIT 4:
Declaration of Joseph M. Lyon,
The Lyon Firm

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

In re: Novant Health, Inc.

LEAD Case No. 1:22-cv-00697
Consolidated with: 1:22-cv-
00700-WO-JEP; 1:22-cv-00709-
WO-JEP, and 1:22-cv-00799-
WO-JEP

**DECLARATION OF JOSEPH M. LYON OF THE LYON FIRM IN SUPPORT OF
PLAINTIFFS’ MOTION FOR AN AWARD OF ATTORNEYS’ FEES,
REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS TO CLASS
REPRESENTATIVES**

1. I am an attorney with The Lyon Firm. I am admitted in the State of Ohio, the Commonwealth of Kentucky, and the State of California. I make this Declaration in support of Plaintiffs’ Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Awards to Class Representatives (the “Motion”).

2. My firm along with Milberg Coleman Bryson Phillips Grossman PLLC, Chestnut Cambronne PA, Markovits, Stock, & DeMarco, LLC, Clayeo C. Arnold, A Professional Corp., and Wolf Haldenstein Adler Freeman & Herz, LLP, were approved by the Court as adequate counsel to represent the proposed Settlement Class.

3. A summary indicating the amount of time expended by the partners, associates, and professional support staff of The Lyon Firm as of March 19, 2024 involved in the litigation as set forth below:

Timekeeper	Rate	Hours	Cumulative Value
Joseph M. Lyon	\$875	97	\$84,875.00

Clint Watson	\$750	39.4	\$29,550.00
Keianna Coulter	\$195	8.6	\$1,677.00
<u>Total</u>		145.0	\$116,102.00

4. The lodestar calculation is based on my firm's current billing rates and was prepared from contemporaneous time records regularly prepared and maintained by my firm. The hourly rates for my firm's partners, attorneys, and professional support staff included are the usual and customary hourly rates charged for services in similar complex litigation.

5. In addition, my firm has submitted fee petitions in other cases that have reported hourly rates at amounts comparable to those sought herein, and courts have approved an award of attorneys' fees in such cases.

6. My firm followed the billing protocol in effect for all counsel billing time to this case and conducted internal audits to ensure that the lodestar submitted includes only compensable work to prepare complaints, respond to motions to dismiss, evaluate and consult with experts, attend the mediation, consult with clients to provide informal discovery and review information provided with defendants. In addition, after the mediation, we spent numerous hours negotiating on terms for the settlement and then preparing all of the settlement related documents. Expense items are billed separately and are not duplicated in my firm's lodestar.

7. My firm is not making a claim for incidental expenses in this matter.

I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Executed on March 20, 2024

/s/ Joseph M. Lyon
Joseph M. Lyon

EXHIBIT 5:
Declaration of M. Anderson Berry,
Clayco C. Arnold PC

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

In re: Novant Health, Inc.

LEAD Case No. 1:22-cv-00697
Consolidated with: 1:22-cv-00700-
WO-JEP; 1:22-cv-00709-WO-JEP,
and 1:22-cv-00799-WO-JEP

**DECLARATION M. ANDERSON BERRY IN SUPPORT OF PLAINTIFFS' MOTION
FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND
SERVICE AWARDS TO CLASS REPRESENTATIVES**

I, M. Anderson Berry, pursuant to section 1746 of title 28 of the United States Code, declare:

1. I am an attorney licensed to practice law in the State of California since 2009. I practice law at Clayco C. Arnold, A Professional Corporation dba Arnold Law Firm (the "Arnold Law Firm"). I head the complex civil litigation group, specifically practicing in complex privacy and data breach class action matters and *qui tam* proceedings. I make this Declaration in support of Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards to Class Representatives (the "Motion").

2. My firm, the Arnold Law Firm, along with Milberg Coleman Bryson Phillips Grossman PLLC, Chestnut Cambronne PA, Markovits, Stock, & DeMarco, LLC, Wolf Haldenstein Adler Freeman & Herz, LLP, and The Lyon Firm were approved by the Court as adequate counsel to represent the proposed Settlement Class.

3. A summary indicating the amount of time expended by the partners, associates, and professional support staff of \$125,608.50 as of March 18, 2024 involved in the litigation as set forth below:

Timekeeper	Rate	Hours	Cumulative Value
Anderson Berry, Attorney	850	43.7	\$37,145.00

Gregory Haroutunian, Attorney	725	39.5	\$28,637.50
Michael Wells, Attorney	675	76.8	\$51,840.00
Brandon P. Jack, Attorney	550	0.8	\$440.00
Lori Martin, Paralegal	308	20.0	\$6,160.00
Bianca E. Marentes, Paralegal	308	4.5	\$1,386.00
Total:		185.3	\$125,608.50

4. The lodestar calculation is based on my firm's current billing rates and was prepared from contemporaneous time records regularly prepared and maintained by my firm. The hourly rates for my firm's partners, attorneys, and professional support staff included are the usual and customary hourly rates charged for services in similar complex litigation.

5. In addition, my firm has submitted fee petitions in other cases that have reported hourly rates at amounts comparable to those sought herein, and courts have approved an award of attorneys' fees in such cases. These cases include, but are by no means limited to: *Bitmouni v. Paysafe Payment Processing Solutions LLC*, No. 21-cv-00641-JCS (N.D. Cal. Feb. 2, 2024) (ECF No. 103); *Beasley et al. v. TTEC Services Corp.*, No. 22-cv-00097-PAB-STV (D. Col. Feb. 21, 2024) (ECF No. 64); *Bowdle v. King's Seafood Co., LLC*, No. 8:21-cv-01784-CJC-JDE (C.D. Cal. Feb. 13, 2023) (ECF No 50); *Carrera Aguallo v. Kemper Corp.*, No. 1:21-cv-01882 (N.D. Ill. Mar. 18, 2022) (ECF No. 53); *Gaston v. FabFitFun, Inc.*, No. 2:20-cv-09534-RGK-E, 2021 US Dist. LEXIS 250695 (C.D. Cal. Dec. 9, 2021) (ECF No. 52); *Riggs v. Kroto, Inc.*, No. 1:20-cv-5822 (N.D. Ill. Oct. 29, 2021) (ECF No. 61).

6. My firm followed the billing protocol in effect for all counsel billing time to this case and conducted internal audits to ensure that the lodestar submitted includes only compensable

work to prepare complaints, respond to motions to dismiss, evaluate and consult with experts, attend the mediation, consult with clients to provide informal discovery and review information provided with defendants. In addition, after the mediation, we spent numerous hours negotiating on terms for the settlement and then preparing all of the settlement related documents. Expense items are billed separately and are not duplicated in my firm's lodestar.

7. The expenses my firm incurred in litigating this action are reflected in the books and records of my firm. These books and records are prepared from expense vouchers, receipts, and check records and other source materials and accurately reflect the expenses incurred.

8. My firm's expenses are summarized below. These expenses were reasonable and necessarily incurred on behalf of the class as court and travel costs.

Disbursement	Total
Filing Fees	\$1,017.00
Travel and Mileage	\$225.76
Westlaw/Pacer	\$642.49
Service of Process	\$225.00
Total:	\$2,110.25

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 20th day of March 2024, at Fair Oaks, California.

By:



M. ANDERSON BERRY (SBN 262879)

EXHIBIT 6:
Declaration of Rachele R.
Byrd, Wolk Haldenstein Adler
Freeman & Herz LLP

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

In re: Novant Health, Inc.

LEAD Case No. 1:22-cv-00697
Consolidated with: 1:22-cv-00700-
WO-JEP; 1:22-cv-00709-WO-JEP,
and 1:22-cv-00799-WO-JEP

**DECLARATION OF RACHELE R. BYRD OF WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP IN SUPPORT OF PLAINTIFFS’ MOTION FOR AN
AWARD OF ATTORNEYS’ FEES, REIMBURSEMENT OF EXPENSES, AND
SERVICE AWARDS TO CLASS REPRESENTATIVES**

1. I am an attorney with the law firm of Wolf Haldenstein Adler Freeman & Herz LLP (“Wolf Haldenstein”). I am admitted in the State of California. I make this Declaration in support of Plaintiffs’ Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Awards to Class Representatives (the “Motion”).

2. Wolf Haldenstein, along with Milberg Coleman Bryson Phillips Grossman PLLC; Chestnut Cambronne PA, Markovits, Stock, & DeMarco, LLC; Clayeo C. Arnold, A Professional Corp.; and The Lyon Firm, was approved by the Court as adequate counsel to represent the proposed Settlement Class.

3. A summary indicating the amount of time expended by the partners (“P”), associates (“A”), and professional support staff (“Par”) of Wolf Haldenstein as of March 18, 2024, involved in the litigation is set forth below:

Timekeeper	Rate	Hours	Cumulative Value
Rachele R. Byrd (P)	\$850.00	30.8	\$26,180.00
Alex Tramontano (A)	\$500.00	43.0	\$21,500.00
Ferdeza Zekiri (A)	\$375.00	5.0	\$1,875.00
Elle Chaseton (Par)	\$350.00	0.5	\$175.00
Totals		79.3	\$49,730.00

4. The lodestar calculation is based on my firm's current billing rates and was prepared from contemporaneous time records regularly prepared and maintained by my firm. The hourly rates for my firm's partners, attorneys, and professional support staff included are the usual and customary hourly rates charged for services in similar complex litigation.

5. In addition, my firm has submitted fee petitions in other cases that have reported hourly rates at amounts comparable to those sought herein, and courts have approved the rates and awarded attorneys' fees in those cases. For example, my firm's hourly rates were approved by Courts in the following cases: *In re: California Pizza Kitchen Data Breach Litig.*, No. 8:21-cv-01928-DOC-KES (C.D. Cal. Feb. 22, 2023), ECF No. 87, ¶¶ 12-13; *Carrera Aguallo v. Kemper Corp.*, No. 1:21-cv-01883 (N.D. Ill. Mar. 18, 2022), ECF No. 53, ¶ 18; *Riggs v. Kroto, Inc., D/B/A iCanvas*, No. 1:30-cv-05822 (N.D. Ill. Oct. 29, 2021), ECF No. 61, ¶ 13; *In re Hanna Andersson & Salesforce.com Data Breach Litig.*, No. 3:20-cv-00812-EMC (N.D. Cal. Jun. 25, 2021), ECF No. 75, ¶ 12; *Gaston v. FabFitFun, Inc.*, No. 2:20-cv-09534-RGK-E (C.D. Cal. Dec. 9, 2021), ECF No. 52 at 5-6; *Enquist v. City of Los Angeles*, No. BC591331 (L.A. Cty. Super. Ct. Mar. 17, 2021); *Granados v. County of Los Angeles*, No. BC361470 (L.A. Cty. Super. Ct. Oct. 30, 2018); *McWilliams v. City of Long Beach*, No. BC361469 (L.A. Cty. Super. Ct. Oct. 30,

2018); *Ardon v. City of Los Angeles*, No. BC363959 (L.A. Cty. Super Ct. Oct. 26, 2016); *DeFrees v. Kirkland*, No. CV 11-4272-JLS (SPx), ECF No. 400 (C.D. Cal. Apr. 11, 2016); *DeFrees v. Kirkland*, No. CV 11-4272 GAF (SPx), 2014 U.S. Dist. LEXIS 157320, at *2 (C.D. Cal. Nov. 4, 2014); and *DeFrees v. Kirkland*, No. CV 11-4272 GAF (SPx), ECF No. 226 (C.D. Cal. Sept. 5, 2012).

6. My firm followed the billing protocol in effect for all counsel billing time to this case and conducted internal audits to ensure that the lodestar submitted includes only compensable work to prepare complaints, respond to motions to dismiss, evaluate and consult with experts, attend the mediation, consult with clients to provide informal discovery and review information provided by defendants. In addition, after the mediation, we spent numerous hours negotiating the terms of the settlement and then preparing all of the settlement related documents. Expense items are billed separately and are not duplicated in my firm's lodestar.

7. The expenses my firm incurred in litigating this action are reflected in the books and records of my firm. These books and records are prepared from expense vouchers, receipts, and check records and other source materials and accurately reflect the expenses incurred.

8. My firm's expenses are summarized below. These expenses were reasonable and necessarily incurred on behalf of the class as court and travel costs.

Disbursement	Total
Reproduction	\$0.20
Legal Research	\$794.22
Filing Fees	\$25.00
Total	\$819.42

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 20, 2024


RACHELE R. BYRD

EXHIBIT 7:
Declaration of Kevin M. Curry

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

In re: Novant Health, Inc.

LEAD Case No. 1:22-cv-00697
Consolidated with: 1:22-cv-00700-
WO-JEP; 1:22-cv-00709-WO-JEP,
and 1:22-cv-00799-WO-JEP

**DECLARATION OF KEVIN CURRY IN SUPPORT OF
PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS TO CLASS
REPRESENTATIVES**

Pursuant to 28 U.S.C. §1746, I, Kevin Curry, state that the following is true and accurate:

1. I am one of the named Plaintiffs in the above-captioned class action lawsuit. I submit this declaration in support of Plaintiff's Motion for Attorneys' Fees, Expenses, and Service Award to Plaintiffs, as well as Plaintiff's forthcoming Motion for Final Approval of Class Action Settlement.

2. I make this declaration based on my personal knowledge and could and would testify to the truthfulness of the facts herein.

3. I am a current patient of Novant Health, Inc. ("Defendant" or "Novant"). I accessed Defendant's MyChart Portal to seek or receive medical treatment. Subsequent to Defendant's disclosure of the presence of the Tracking Tool on its MyChart Portal, I received a letter from Defendant notifying me that my medical information either was or may have been disclosed via Defendant's Tracking Tool. Shortly after receiving that notice, I initiated the above captioned action through my attorneys.

4. I have been in regular contact with my attorneys in this matter and have stayed apprised of this case's progress. My attorneys have been available to answer any questions I've had as this case has progressed.

5. I remained engaged with my attorneys as this case progressed, including as we explored settlement with Defendant.

6. I have committed substantial time to pursuing this matter on my own behalf and on behalf of the class without any promise or guarantee of compensation. This includes time spent researching the data breach, communicating with my counsel, reviewing and approving the allegations in the complaint, providing information to my attorneys to assist with litigation and settlement negotiations in response to discovery requests by Defendant, participating extensively in settlement negotiations, and reviewing and approving the terms of the proposed settlement.

7. I understand that the Settlement benefits afforded to me and the approximately 1,300,000 other similarly situated individuals includes a \$6,600,000 settlement fund that will be used to make cash payments to me and other class members submitting valid claims.

8. I have agreed to and strongly support this Settlement and the benefits recovered and believe they are fair, reasonable, and adequate.

9. I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Dated: March 19, 2024

/s/ Kevin Curry
Kevin Curry

EXHIBIT 8:
Declaration of Keith David Allen

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

In re: Novant Health, Inc.

LEAD Case No. 1:22-cv-00697
Consolidated with: 1:22-cv-00700-
WO-JEP; 1:22-cv-00709-WO-JEP,
and 1:22-cv-00799-WO-JEP

**DECLARATION OF KEITH DAVID ALLEN IN SUPPORT OF
PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS TO CLASS
REPRESENTATIVES**

Pursuant to 28 U.S.C. §1746, I, Keith David Allen, state that the following is true and accurate:

1. I am one of the named Plaintiffs in the above-captioned class action lawsuit. I submit this declaration in support of Plaintiff's Motion for Attorneys' Fees, Expenses, and Service Award to Plaintiffs, as well as Plaintiff's forthcoming Motion for Final Approval of Class Action Settlement.

2. I make this declaration based on my personal knowledge and could and would testify to the truthfulness of the facts herein.

3. I am a current patient of Novant Health, Inc. ("Defendant" or "Novant"). I accessed Defendant's MyChart Portal to seek or receive medical treatment. Subsequent to Defendant's disclosure of the presence of the Tracking Tool on its MyChart Portal, I received a letter from Defendant notifying me that my medical information either was or may have been disclosed via Defendant's Tracking Tool. Shortly after receiving that notice, I initiated the above captioned action through my attorneys.

4. I have been in regular contact with my attorneys in this matter and have stayed apprised of this case's progress. My attorneys have been available to answer any questions I've had as this case has progressed.

5. I remained engaged with my attorneys as this case progressed, including as we explored settlement with Defendant.

6. I have committed substantial time to pursuing this matter on my own behalf and on behalf of the class without any promise or guarantee of compensation. This includes time spent researching the data breach, communicating with my counsel, reviewing and approving the allegations in the complaint, providing information to my attorneys to assist with litigation and settlement negotiations in response to discovery requests by Defendant, participating extensively in settlement negotiations, and reviewing and approving the terms of the proposed settlement.

7. I understand that the Settlement benefits afforded to me and the approximately 1,300,000 other similarly situated individuals includes a \$6,600,000 settlement fund that will be used to make cash payments to me and other class members submitting valid claims.

8. I have agreed to and strongly support this Settlement and the benefits recovered and believe they are fair, reasonable, and adequate.

9. I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Dated: March 19, 2024

/s/ Keith Van Allen
Keith Van Allen

EXHIBIT 9:
Declaration of Karyn Cook

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

In re: Novant Health, Inc.

LEAD Case No. 1:22-cv-00697
Consolidated with: 1:22-cv-00700-
WO-JEP; 1:22-cv-00709-WO-JEP,
and 1:22-cv-00799-WO-JEP

**DECLARATION OF KARYN COOK IN SUPPORT OF PLAINTIFFS' MOTION
FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF
EXPENSES,
AND SERVICE AWARDS TO CLASS REPRESENTATIVES**

Pursuant to 28 U.S.C. §1746, I, Karyn Cook state that the following is true and accurate:

1. I am the named Plaintiff in the above-captioned class action lawsuit. I submit this declaration in support of Plaintiff's Motion for Attorneys' Fees, Expenses, and Service Award to Plaintiffs, as well as Plaintiff's forthcoming Motion for Final Approval of Class Action Settlement.
2. I make this declaration based on my personal knowledge and could and would testify to the truthfulness of the facts herein.
3. I am a former patient of Novant Health, Inc. ("Defendant" or "Novant"). I accessed Defendant's MyChart Portal to seek and receive medical treatment. Subsequent to Defendant's disclosure of the presence of the Tracking Tool on its MyChart Portal, I received a letter from Defendant notifying me that my medical information either was or may have been disclosed via Defendant's Tracking Tool. Shortly after receiving that notice, I initiated the above captioned action through my attorneys.
4. I have been in regular contact with my attorneys in this matter and have stayed apprised of this case's progress. My attorneys have been available to answer any questions I've had as this case has progressed.

5. I remained engaged with my attorneys as this case progressed, including as we explored settlement with Defendant.

6. I have committed substantial time to pursuing this matter on my own behalf and on behalf of the class without any promise or guarantee of compensation. This includes time spent researching the data breach, communicating with my counsel, reviewing and approving the allegations in the complaint, providing information to my attorneys to assist with litigation and settlement negotiations in response to discovery requests by Defendant, participating extensively in settlement negotiations, and reviewing and approving the terms of the proposed settlement.

7. I understand that the Settlement benefits afforded to me and the approximately 1,300,000 other similarly-situated individuals includes a \$6,600,000 settlement fund that will be used to make cash payments to me and other class members submitting valid claims after the reduction of my counsel's attorneys' fees and expenses, any settlement administration costs and expenses, and the potential class representative service award.

8. I believe that the Settlement benefits are a great result for me and my fellow Class Members. I strongly support this Settlement and the benefits recovered and believe they are more than reasonable.

9. I have reviewed Class Counsel's request for attorneys' fees of 1/3 the \$6,600,000 common fund (\$2,200,000) and expenses (\$15,587.15) as detailed in the Declaration of Gary M. Klinger in support of Motion for Attorneys' Fees, Reimbursement of Expenses, and Service Awards to Plaintiffs and believe such fees and expenses are fair and adequate under the circumstances of this case.

10. I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Dated: March 19, 2024

Handwritten signature of Karyn Cook in black ink.

Plaintiff, Karyn Cook

EXHIBIT 10:
Declaration of Daymond Cox

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

In re: Novant Health, Inc.

LEAD Case No. 1:22-cv-00697
Consolidated with: 1:22-cv-00700-
WO-JEP; 1:22-cv-00709-WO-JEP,
and 1:22-cv-00799-WO-JEP

**DECLARATION OF DAYMOND COX IN SUPPORT OF
PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS TO CLASS
REPRESENTATIVES**

Pursuant to 28 U.S.C. §1746, I, Daymond Cox, state that the following is true and accurate:

1. I am one of the named Plaintiffs in the above-captioned class action lawsuit. I submit this declaration in support of Plaintiff's Motion for Attorneys' Fees, Expenses, and Service Award to Plaintiffs, as well as Plaintiff's forthcoming Motion for Final Approval of Class Action Settlement. I make this declaration based on my personal knowledge and could and am able to testify to the truthfulness of the facts herein.

2. I am a former patient of Novant Health, Inc. ("Defendant" or "Novant"). I accessed Defendant's MyChart Portal to seek or receive medical treatment. Subsequent to Defendant's disclosure of the presence of the Tracking Tool on its MyChart Portal, I received a letter from Defendant notifying me that my medical information either was or may have been disclosed via Defendant's Tracking Tool.

3. I have been in regular contact with my attorneys in this matter and have stayed apprised of this case's progress. My attorneys have been available to answer any questions I've had as this case has progressed. I remained engaged with my attorneys as this case progressed, including as we explored settlement with Defendant.

4. I have committed substantial time to pursuing this matter on my own behalf and on behalf of the class without any promise or guarantee of compensation. This includes time spent researching Novant's disclosure of my personal information, communicating with my counsel, reviewing and approving the allegations in the complaint, participating in plaintiff vetting, providing information to my attorneys to assist with litigation and settlement negotiations in response to discovery requests by Defendant, staying apprised of settlement negotiations, and reviewing and approving the terms of the proposed settlement. I believe that my efforts on behalf of the Settlement Class including the non-reversionary common fund settlement supports my request for a \$2,500 Service Award.

5. I understand that the Settlement benefits afforded to me and the approximately 1,300,000 other similarly-situated individuals includes a \$6,600,000 settlement fund that will be used to make cash payments to me and other class members submitting valid claims, after the deduction of attorneys' fees, expenses, Service Awards, and settlement administration fees and expenses.

6. Class Counsel has reviewed the terms of the Settlement with me. I support this Settlement and the pro rata cash settlement benefits it provides and believe the Settlement is fair, reasonable, and adequate.

7. I understand that Class Counsel seek attorneys' fees of 1/3 the \$6,600,000 common fund and expenses not to exceed \$30,0000 and such request for fees and expenses in this case.

I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Dated: March 20, 2024

/s/ Daymond Cox
Daymond Cox

EXHIBIT 11:
Declaration of Meghan Curry

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

In re: Novant Health, Inc.

LEAD Case No. 1:22-cv-00697
Consolidated with: 1:22-cv-00700-
WO-JEP; 1:22-cv-00709-WO-JEP,
and 1:22-cv-00799-WO-JEP

**DECLARATION OF MEGHAN CURRY IN SUPPORT OF
PLAINTIFF'S MOTION FOR AN AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS TO CLASS
REPRESENTATIVES**

Pursuant to 28 U.S.C. §1746, I, Meghan Curry, state that the following is true and accurate:

1. I am one of the named Plaintiffs in the above-captioned class action lawsuit. I submit this declaration in support of Plaintiff's Motion for Attorneys' Fees, Expenses, and Service Award to Plaintiffs, as well as Plaintiff's forthcoming Motion for Final Approval of Class Action Settlement.

2. I make this declaration based on my personal knowledge and could and would testify to the truthfulness of the facts herein.

3. I am a current patient of Novant Health, Inc. ("Defendant" or "Novant"). I accessed Defendant's MyChart Portal to seek or receive medical treatment. Subsequent to Defendant's disclosure of the presence of the Tracking Tool on its MyChart Portal, I received a letter from Defendant notifying me that my medical information either was or may have been disclosed via Defendant's Tracking Tool. Shortly after receiving that notice, I initiated the above captioned action through my attorneys.

4. I have been in regular contact with my attorneys in this matter and have stayed apprised of this case's progress. My attorneys have been available to answer any questions I've had as this case has progressed.

5. I remained engaged with my attorneys as this case progressed, including as we explored settlement with Defendant.

6. I have committed substantial time to pursuing this matter on my own behalf and on behalf of the class without any promise or guarantee of compensation. This includes time spent researching the data breach, communicating with my counsel, reviewing and approving the allegations in the complaint, providing information to my attorneys to assist with litigation and settlement negotiations in response to discovery requests by Defendant, participating extensively in settlement negotiations, and reviewing and approving the terms of the proposed settlement.

7. I understand that the Settlement benefits afforded to me and the approximately 1,300,000 other similarly situated individuals includes a \$6,600,000 settlement fund that will be used to make cash payments to me and other class members submitting valid claims.

8. I have agreed to and strongly support this Settlement and the benefits recovered and believe they are fair, reasonable, and adequate.

9. I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Dated: March 19, 2024

/s/ Megan Curry
Megan Curry

EXHIBIT 12:
Declaration of Dr. Richard Nero

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

In re: Novant Health, Inc.

LEAD Case No. 1:22-cv-00697
Consolidated with: 1:22-cv-
00700-WO-JEP; 1:22-cv-00709-
WO-JEP, and 1:22-cv-00799-
WO-JEP

**DECLARATION OF DR. RICHARD NERO IN SUPPORT OF PLAINTIFFS’
MOTION FOR AN AWARD OF ATTORNEYS’ FEES, REIMBURSEMENT
OF EXPENSES, AND SERVICE AWARDS TO CLASS REPRESENTATIVES**

Pursuant to 28 U.S.C. §1746, I, Dr. Richard Nero, state that the following is true and accurate:

1. I am one of the named Plaintiffs in the above-captioned class action lawsuit. I submit this declaration in support of Plaintiff’s Motion for Attorneys’ Fees, Expenses, and Service Award to Plaintiffs, as well as Plaintiff’s forthcoming Motion for Final Approval of Class Action Settlement.

2. I make this declaration based on my personal knowledge and could and would testify to the truthfulness of the facts herein.

3. I am a current patient of Novant Health, Inc. (“Defendant” or “Novant”). I accessed Defendant’s MyChart Portal to seek or receive medical treatment. Subsequent to Defendant’s disclosure of the presence of the Tracking Tool on its MyChart Portal, I received a letter from Defendant notifying me that my medical information either was or may have been disclosed via Defendant’s Tracking Tool. Shortly after receiving that notice, I initiated the above captioned action through my attorneys.

4. I have been in regular contact with my attorneys in this matter and have stayed apprised of this case's progress. My attorneys have been available to answer any questions I've had as this case has progressed.

5. I remained engaged with my attorneys as this case progressed, including as we explored settlement with Defendant.

6. I have committed substantial time to pursuing this matter on my own behalf and on behalf of the class without any promise or guarantee of compensation. This includes time spent researching the data breach, communicating with my counsel, reviewing and approving the allegations in the complaint, providing information to my attorneys to assist with litigation and settlement negotiations in response to discovery requests by Defendant, participating extensively in settlement negotiations, and reviewing and approving the terms of the proposed settlement.

7. I understand that the Settlement benefits afforded to me and the approximately 1,300,000 other similarly-situated individuals includes a \$6,600,000 settlement fund that will be used to make cash payments to me and other class members submitting valid claims.

8. I have agreed to and strongly support this Settlement and the benefits recovered and believe they are fair, reasonable, and adequate.

9. I have reviewed Class Counsel's request for attorneys' fees of 1/3 the \$6,600,000 common fund (\$2,200,000) and expenses (\$18,234.77) as detailed in the Declaration of Gary M. Klinger in support of Motion for Attorneys' Fees, Reimbursement

of Expenses, and Service Awards to Plaintiffs and believe the fees and expenses requested are fair under the circumstances of this case.

10. I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Dated: March 20, 2024

/s/ Dr. Richard L. Nero
Dr. Richard L. Nero

EXHIBIT 13:
Declaration of David Novack

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

In re: Novant Health, Inc.

LEAD Case No. 1:22-cv-00697
Consolidated with: 1:22-cv-00700-
WO-JEP; 1:22-cv-00709-WO-JEP,
and 1:22-cv-00799-WO-JEP

**DECLARATION OF DAVID NOVACK IN SUPPORT OF PLAINTIFFS'
MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT
OF EXPENSES, AND SERVICE AWARDS TO CLASS REPRESENTATIVES**

Pursuant to 28 U.S.C. §1746, I, David Novack, state that the following is true and accurate:

1. I am one of the named Plaintiffs in the above-captioned class action lawsuit. I submit this declaration in support of Plaintiff's Motion for Attorneys' Fees, Expenses, and Service Award to Plaintiffs, as well as Plaintiff's forthcoming Motion for Final Approval of Class Action Settlement.

2. I make this declaration based on my personal knowledge and could and would testify to the truthfulness of the facts herein.

3. I am a current patient of Novant Health, Inc. ("Defendant" or "Novant"). I accessed Defendant's MyChart Portal to seek or receive medical treatment. Subsequent to Defendant's disclosure of the presence of the Tracking Tool on its MyChart Portal, I received a letter from Defendant notifying me that my medical information either was or may have been disclosed via Defendant's Tracking Tool. Shortly after receiving that notice, I initiated the above captioned action through my attorneys.

4. I have been in regular contact with my attorneys in this matter and have stayed apprised of this case's progress. My attorneys have been available to answer any questions I've had as this case has progressed.

5. I remained engaged with my attorneys as this case progressed, including as we explored settlement with Defendant.

6. I have committed substantial time to pursuing this matter on my own behalf and on behalf of the class without any promise or guarantee of compensation. This includes time spent researching the data breach, communicating with my counsel, reviewing and approving the allegations in the complaint, providing information to my attorneys to assist with litigation and settlement negotiations in response to discovery requests by Defendant, participating extensively in settlement negotiations, and reviewing and approving the terms of the proposed settlement.

7. I understand that the Settlement benefits afforded to me and the approximately 1,300,000 other similarly situated individuals includes a \$6,600,000 settlement fund that will be used to make cash payments to me and other class members submitting valid claims.

8. I have agreed to and strongly support this Settlement and the benefits recovered and believe they are fair, reasonable, and adequate.

9. I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Dated: March 19, 2024

/s/ David Novack
David Novack

EXHIBIT 14:
Declaration of Cheryl Taylor

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

In re: Novant Health, Inc.

LEAD Case No. 1:22-cv-00697
Consolidated with: 1:22-cv-00700-
WO-JEP; 1:22-cv-00709-WO-JEP,
and 1:22-cv-00799-WO-JEP

**DECLARATION OF CHERYL TAYLOR IN SUPPORT OF PLAINTIFFS’
MOTION FOR AN AWARD OF ATTORNEYS’ FEES, REIMBURSEMENT OF
EXPENSES, AND SERVICE AWARDS TO CLASS REPRESENTATIVES**

Pursuant to 28 U.S.C. §1746, I, Cheryl Taylor, state that the following is true and accurate:

1. I am the named Plaintiff in the above-captioned class action lawsuit. I submit this declaration in support of Plaintiff’s Motion for Attorneys’ Fees, Expenses, and Service Award to Plaintiffs, as well as Plaintiff’s forthcoming Motion for Final Approval of Class Action Settlement.

2. I make this declaration based on my personal knowledge and could and would testify to the truthfulness of the facts herein.

3. I am a current patient of Novant Health, Inc. (“Defendant” or “Novant”). I accessed Defendant’s MyChart Portal to seek and receive medical treatment. Subsequent to Defendant’s disclosure of the presence of the Tracking Tool on its MyChart Portal, I received a letter from Defendant notifying me that my medical information either was or may have been disclosed via Defendant’s Tracking Tool. Shortly after receiving that notice, I initiated the above captioned action through my attorneys.

4. I have been in regular contact with my attorneys in this matter and have stayed apprised of this case’s progress. My attorneys have been available to answer any questions I’ve had as this case has progressed.

5. I remained engaged with my attorneys as this case progressed, including as we explored settlement with Defendant.

6. I have committed substantial time to pursuing this matter on my own behalf and on behalf of the class without any promise or guarantee of compensation. This includes time spent researching the data breach, communicating with my counsel, reviewing and approving the allegations in the complaint, providing information to my attorneys to assist with litigation and settlement negotiations in response to discovery requests by Defendant, participating extensively in settlement negotiations, and reviewing and approving the terms of the proposed settlement.

7. I understand that the Settlement benefits afforded to me and the approximately 1,300,000 other similarly-situated individuals includes a \$6,600,000 settlement fund that will be used to make cash payments to me and other class members submitting valid claims after the reduction of my counsel's attorneys' fees and expenses, any settlement administration costs and expenses, and the potential class representative service award.

8. I believe that the Settlement benefits are a great result for me and my fellow Class Members. I strongly support this Settlement and the benefits recovered and believe they are more than reasonable.

9. I have reviewed Class Counsel's request for attorneys' fees of 1/3 the \$6,600,000 common fund (\$2,200,000) and expenses (\$15,587.15) as detailed in the Declaration of Gary M. Klinger in support of Motion for Attorneys' Fees, Reimbursement of Expenses, and Service Awards to Plaintiffs and believe such fees and expenses are fair and adequate under the circumstances of this case.

10. I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Dated: March 18, 2024



Cheryl Taylor (Mar 18, 2024 11:32 EDT)
Cheryl Taylor

EXHIBIT 15:
Declaration of Fernando Valencia

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

In re: Novant Health, Inc.

LEAD Case No. 1:22-cv-00697
Consolidated with: 1:22-cv-00700-
WO-JEP; 1:22-cv-00709-WO-JEP,
and 1:22-cv-00799-WO-JEP

**DECLARATION OF FERNANDO VALENCIA IN SUPPORT OF PLAINTIFFS'
MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF
EXPENSES, AND SERVICE AWARD TO CLASS REPRESENTATIVES**

Pursuant to 28 U.S.C. §1746, I, Fernando Valencia state that the following is true and accurate:

1. I am the named Plaintiff in the above-captioned class action lawsuit. I submit this declaration in support of Plaintiff's Motion for Attorneys' Fees, Expenses, and Service Award to Plaintiffs, as well as Plaintiff's forthcoming Motion for Final Approval of Class Action Settlement.

2. I make this declaration based on my personal knowledge and could and would testify to the truthfulness of the facts herein.

3. I am a former patient of Novant Health, Inc. ("Defendant" or "Novant"). I accessed Defendant's MyChart Portal to seek and receive medical treatment. Subsequent to Defendant's disclosure of the presence of the Tracking Tool on its MyChart Portal, I received a letter from Defendant notifying me that my medical information either was or may have been disclosed via Defendant's Tracking Tool. Shortly after receiving that notice, I initiated the above captioned action through my attorneys.

4. I have been in regular contact with my attorneys in this matter and have stayed apprised of this case's progress. My attorneys have been available to answer any questions I've had as this case has progressed.

5. I remained engaged with my attorneys as this case progressed, including as we explored settlement with Defendant.

6. I have committed substantial time to pursuing this matter on my own behalf and on behalf of the class without any promise or guarantee of compensation. This includes time spent researching the data breach, communicating with my counsel, reviewing and approving the allegations in the complaint, providing information to my attorneys to assist with litigation and settlement negotiations in response to discovery requests by Defendant, participating extensively in settlement negotiations, and reviewing and approving the terms of the proposed settlement.

7. I understand that the Settlement benefits afforded to me and the approximately 1,300,000 other similarly-situated individuals includes a \$6,600,000 settlement fund that will be used to make cash payments to me and other class members submitting valid claims after the reduction of my counsel's attorneys' fees and expenses, any settlement administration costs and expenses, and the potential class representative service award.

8. I believe that the Settlement benefits are a great result for me and my fellow Class Members. I strongly support this Settlement and the benefits recovered and believe they are more than reasonable.

9. I have reviewed Class Counsel's request for attorneys' fees of 1/3 the \$6,600,000 common fund (\$2,200,000) and expenses (\$15,587.15) as detailed in the Declaration of Gary M. Klinger in support of Motion for Attorneys' Fees, Reimbursement of Expenses, and Service Awards to Plaintiffs and believe such fees and expenses are fair and adequate under the circumstances of this case.

10. I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Dated: March 19, 2024

Fernando Valencia

Plaintiff, Fernando Valencia

EXHIBIT 16:
Declaration of Natalie Wells Reyes

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

In re: Novant Health, Inc.

LEAD Case No. 1:22-cv-00697
Consolidated with: 1:22-cv-00700-
WO-JEP; 1:22-cv-00709-WO-JEP,
and 1:22-cv-00799-WO-JEP

**DECLARATION OF NATALIE WELLS REYES IN SUPPORT OF PLAINTIFF'S
MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF
EXPENSES, AND SERVICE AWARDS TO CLASS REPRESENTATIVES**

Pursuant to 28 U.S.C. §1746, I, Natalie Wells Reyes state that the following is true and accurate:

1. I am the named Plaintiff in the above-captioned class action lawsuit. I submit this declaration in support of Plaintiff's Motion for Attorneys' Fees, Expenses, and Service Award to Plaintiffs, as well as Plaintiff's forthcoming Motion for Final Approval of Class Action Settlement.

2. I make this declaration based on my personal knowledge and could and would testify to the truthfulness of the facts herein.

3. I am a current patient of Novant Health, Inc. ("Defendant" or "Novant"). I accessed Defendant's MyChart Portal to seek and receive medical treatment. Subsequent to Defendant's disclosure of the presence of the Tracking Tool on its MyChart Portal, I received a letter from Defendant notifying me that my medical information either was or may have been disclosed via Defendant's Tracking Tool. Shortly after receiving that notice, I initiated the above captioned action through my attorneys.

4. I have been in regular contact with my attorneys in this matter and have stayed apprised of this case's progress. My attorneys have been available to answer any questions I've had as this case has progressed.

5. I remained engaged with my attorneys as this case progressed, including as we explored settlement with Defendant.

6. I have committed substantial time to pursuing this matter on my own behalf and on behalf of the class without any promise or guarantee of compensation. This includes time spent researching the data breach, communicating with my counsel, reviewing and approving the allegations in the complaint, providing information to my attorneys to assist with litigation and settlement negotiations in response to discovery requests by Defendant, participating extensively in settlement negotiations, and reviewing and approving the terms of the proposed settlement.

7. I understand that the Settlement benefits afforded to me and the approximately 1,300,000 other similarly-situated individuals includes a \$6,600,000 settlement fund that will be used to make cash payments to me and other class members submitting valid claims after the reduction of my counsel's attorneys' fees and expenses, any settlement administration costs and expenses, and the potential class representative service award.

8. I believe that the Settlement benefits are a great result for me and my fellow Class Members. I strongly support this Settlement and the benefits recovered and believe they are more than reasonable.

9. I have reviewed Class Counsel's request for attorneys' fees of 1/3 the \$6,600,000 common fund (\$2,200,000) and expenses (\$15,587.15) as detailed in the Declaration of Gary M. Klinger in support of Motion for Attorneys' Fees, Reimbursement of Expenses, and Service Awards to Plaintiffs and believe such fees and expenses are fair and adequate under the circumstances of this case.

10. I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Dated: March 20, 2024

/s/ Natalie Wells Reyes
Plaintiff, Natalie Wells Reyes