

**IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

**IN RE: SOUTHERN OHIO HEALTH
SYSTEMS DATA BREACH**

Case No. A2101886

JUDGE JENNIFER BRANCH

**CLASS COUNSEL'S APPLICATION
FOR ATTORNEYS' FEES, COSTS
AND EXPENSES, AND CLASS
REPRESENTATIVE CONTRIBUTION
AWARD**

Pursuant to Rule 23 of the Ohio Civil Rules of Procedure, the Settlement Agreement, and this Court's August 2, 2022 Order Granting Preliminary Approval, Class Counsel respectfully requests this Court grant, as part of its final approval¹ of this class action settlement, the following: (1) attorney's fees in the amount of \$649,935.00, (2) expense reimbursement of \$21,268.09, and (3) a class representative service award of \$2,500 for each of the three class representatives. The supporting Memorandum is attached which includes an Affidavit from the undersigned counsel.

Respectfully submitted,

/s/ Joseph M. Lyon
Joseph M. Lyon (0076050)
THE LYON FIRM, LLC
2754 Erie Ave.
Cincinnati, Ohio 45208
Telephone: (513) 381-2333
Facsimile: (513) 721-1178
jlyon@thelyonfirm.com

¹ The Final Approval hearing is currently set for November 17, 2022.

Jeffrey S. Goldenberg (0063771)
Todd B. Naylor (0068388)
GOLDENBERG SCHNEIDER, LPA
4445 Lake Forest Drive, Suite 490
Cincinnati, OH 45242
Telephone: (513) 345-8291
Facsimile: (513) 345-8294
jgoldenberg@gs-legal.com
tnaylor@gs-legal.com

Marc E. Dann (0039425)
Brian D. Flick (0081605)
DANN LAW
P.O. Box 6031040
Cleveland, Ohio 44103
(216) 373-0539 telephone
(216) 373-0536 facsimile
notices@dannlaw.com

Attorneys for Plaintiffs and the Class

MEMORANDUM OF LAW

I. INTRODUCTION

Plaintiffs James Jones, Derishia Smith, and Tommie Shearer filed two related actions against Defendant Adena Health Systems (“*Adena*”) and TriHealth, Inc. (“*TriHealth*”) alleging that Defendants failed to protect their patients’ Sensitive Information from a criminal hacking and ransomware attack (“Data Breach”). Following full briefing on two separate Motions to Dismiss, the exchange and review of informal discovery, and two full days of mediation with Federal Magistrate Judge Morton Denlow, retired, of JAMS, the Parties agreed to a settlement to resolve the complex litigation. The *Adena* and *TriHealth* related actions were then consolidated before this Court on May 27, 2022. After several hearings related to the settlement structure and benefits to the Class, as well as revisions to the notice program, this Court entered Preliminary Approval of this settlement which creates a \$1,950,000 non-reversionary common fund and provides for broad relief to the Class of health care patients impacted by the Data Breach. Notice was then initiated to the 418,433 Class members on September 22, 2022, and the settlement administration is currently ongoing. To date, there have been no objections to the settlement or proposed attorney fees.

Now, consistent with Rule 23, the Settlement Agreement, and this Court’s August 2, 2022 Order Granting Preliminary Approval of the class settlement, Class Counsel respectfully requests that this Court award, as part of the final approval of this class action settlement (which hearing is scheduled for November 17, 2022 at 3 pm), \$649,935.00 as attorneys’ fees, costs and expenses of \$21,268.09, and a \$2,500 contribution award to each of the three named Plaintiffs James Jones, Derishia Smith, and Tommie Sharer. This request is consistent with and well within the “typical

range” awarded for class action litigation in Ohio, and is reasonable considering the work performed, the risk assumed, and the experience of Class Counsel.

II. CLASS COUNSEL’S ATTORNEYS’ FEE REQUEST IS REASONABLE AND WELL WITHIN THE “TYPICAL RANGE” AWARDED IN OHIO FOR COMMON FUND SETTLEMENTS

A court’s ability to award attorneys’ fees stems from its “historic power of equity” which permits a party recovering a fund for the benefit of others to recover his costs, including his attorneys’ fees, from the fund itself or from the other parties enjoying the benefit. *See Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 257 (1975). “A litigant or 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.” *Bowling v. Pfizer, Inc.*, 922 F.Supp. 1261, 1277 (S.D. Ohio 1996) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)). *See also Brotherton v. Frank P. Cleveland*, 141 F. Supp.2d 907, 910 (S.D. Ohio 2001) (similar).²

The Supreme Court of Ohio has stated that “the attorney who is eligible for attorney’s fees is one ‘who, at his own expense, has maintained a successful suit for the preservation, protection, and increase of a common fund or common property, or who has created at his own expense, or brought into a court a fund in which others may share with him.’” *State Ex Rel. Montrie Nursing Home, Inc. v. Creasy*, 5 Ohio St. 3d 124, 127 (1983) (quoting *Smith v. Kroeger*, 138 Ohio St. 508, 515 (1941)). *See also Hoepfner v. Jess Howard Elec. Co.*, 150 Ohio App. 3d 216, 2002-Ohio-6167, 780 N.E.2d 290, ¶53 (10th Dist.) (“[O]ne who recovers a common fund for the benefit of others than himself should be entitled to payment for attorney fees from the fund on the theory that

² Federal authority is an appropriate aid to assist in interpreting Ohio Civil Rule 23. *See Cullen v. State Farm Mut. Auto. Ins. Co.*, 2013-Ohio-4733, 137 Ohio St. 3d 373, 378, 999 N.E.2d 614, 621 *reconsideration denied*, 2013-Ohio-5678, 137 Ohio St. 3d 1444, 999 N.E.2d 698 (2013) (citing *Marks v. C.P. Chem. Co., Inc.*, 31 Ohio St.3d 200, 201, 509 N.E.2d 1249 (1987)).

those benefited by the fund would otherwise be unjustly enriched.”); *Nordquist v. Schwartz*, 7th Dist. Columbiana No. 11CO 21, 2012-Ohio-4571, 2012 WL 4555843, ¶42 (“The common fund doctrine allows a representative plaintiff who succeeds in creating or enlarging a fund to recover attorney fees from that fund.”).

Here, Class Counsel created a non-reversionary common fund of \$1,950,000.³ To calculate a reasonable attorney fee when a common fund has been created, Ohio courts follow the “percentage of the fund” approach. *See Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 789 (N.D. Ohio 2010) (“percentage of the fund has been the preferred method for common fund cases, where there is a single pool of money and each class member is entitled to a share (i.e., a ‘common fund’)”). In fact, the Sixth Circuit has noted that “the percentage of the fund method more accurately reflects the results achieved.” *Rawlings v. Prudential-Bache Properties*, 9 F.3d 513, 516 (6th Cir. 1993) (“The percentage of the fund method has a number of advantages: it is easy to calculate; it establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation.”). *See also Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (noting “the percentage method ... ‘directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation.’ In contrast, the ‘lodestar create[s] an unanticipated disincentive to early settlements, tempt[s] lawyers to run up their hours, and compel[s] district courts to engage in a gimlet-eyed review of line-item fee audits.’”) (internal citations and quotations omitted).

³ See Settlement Agreement, Section 39, attached as Exhibit A to the Motion for Order Preliminarily Approving Class Action Settlement, filed on June 23rd, 2022.

Class Counsel's request for a fee award of 33% of the common fund is well within the "typical range" awarded in the Sixth Circuit. *See In re Cincinnati Gas & Electric Company Securities Litigation*, 643 F.Supp. 148, 150 (S.D. Ohio 1986) ("typically the percentages range from 20% - 50%"); *Manners v. American General Life Ins. Co.*, M.D.Tenn No. 3-98-0266, 1999 WL 33581944, at *29 (Aug. 11, 1999) ("[T]hroughout the Sixth Circuit, attorneys' fees in class actions have ranged from 20%-50%."). The 20-50% range continues to be typical within the Sixth Circuit. *See, e.g., Dillworth v. Case Farms Processing, Inc.*, N.D. Ohio No. 5:08-cv-1694, 2010 WL 776933, at *7 (Mar. 8, 2010) (fee equal to 33% of settlement amount); *Brent v. Midland Funding, LLC*, N.D. Ohio No. 3:11 CV 1332, 2011 WL 3862363, at *19 (Sept. 1, 2011) (fee equal to 29% of the settlement amount); *Clevenger v. Dillard's, Inc.*, S.D. Ohio No. C-1-02-558, 2007 WL 764291, at *1 (Mar. 9, 2007) (fee equal to 29% of settlement fund).⁴

In this case, there is no reason to depart from the "typical range" awarded as attorneys' fees in common fund cases. Class Counsel are highly experienced in class action data breach litigation.⁵ And Class Counsel expended substantial time and resources advancing this litigation and resolving the matter with broad relief offered to the Class. Counsel compiled, exchanged, reviewed, and analyzed information involving complex issues of data security, and briefed novel issues of law. It was only after extensive briefing, and the exchange of information, that the parties

⁴ Courts in other circuits have likewise adopted the 20%-50% range as reasonable. *See e.g., Yanez v. HL Welding, Inc.*, No. 20cv1789-MDD, 2022 WL 788703, at *11 (S.D. Cal., Mar. 15, 2022) ("case law surveys suggest" that "30-50% is "commonly ... awarded in which the common fund is relatively small"); *In re TikTok, Inc., Consumer Privacy Litigation*, MDL No. 2948, 2022 WL 2982782, at *27 (N.D. Ill., July 28, 2022) (33% is typical fee award in data privacy settlements); *Baron v. Commercial & Industrial Bank of Memphis*, S.D.N.Y. No. 75 Civ. 1274, 1979 WL 1252, at *6 (Oct. 3, 1979) (36% award); and *Clark v. Cameron-Brown Co.*, M.D.N.C. No. C-75-65G, 1981 WL 1637, at *1 (Apr. 6, 1981) (35% award).

⁵ See Firm Profiles, Exhibits, 1, 2, and 3 attached to the Motion for Order Preliminarily Approving Class Action Settlement.

participated in a mediation process that eventually resulted in this settlement. Class Counsel then filed a motion seeking preliminary approval of that settlement, which required additional revisions and effort to finalize the settlement.⁶ Class Counsel also advanced substantial expenses to benefit the Class, at the risk of non-repayment if the litigation was not successful.⁷ Moreover, Class Counsel agreed to undertake this litigation and advance the time and expenses purely on a contingent basis.⁸ Class Counsel has not received any compensation or reimbursement for expenses during the pendency of this action.⁹ “In a contingent-fee agreement, the lawyer takes on a large part of the financial risk of a case because if the case is resolved against the client, the lawyer will not receive any compensation for his or her work on the case.” *Faieta v. World Harvest Church*, 147 Ohio Misc.2d 51, 2008-Ohio-3140, ¶¶147, 153 (C.P.), *aff’d* 10th Dist. No. 08AP-527, 2008-Ohio-6959 (Dec. 31, 2008).

Indeed, multiple Ohio courts in this County have previously approved similar awards to Class Counsel in connection with similar settlements involving contingency fees such as this case.¹⁰ Notably, the Honorable Judge Kubicki of this Hamilton County Court of Common Pleas

⁶ See Affidavit of Joseph Lyon, ¶ 9, attached as Exhibit A.

⁷ *Id.*, ¶ 11.

⁸ *Id.*, ¶ 7.

⁹ *Id.*

¹⁰ See Final Order and Judgment Approving Settlement, Certifying Class for Settlement Purposes, Awarding Class Counsel Attorneys’ Fees and Dismissing Action with Prejudice, *Kanet v. Third Federal Savings & Loan Assoc. of Cleveland*, Hamilton C.P. No. A 1302476 (Mar. 11, 2014) (awarding \$336,700 in attorneys’ fees (33% common fund), \$983 in costs, and \$2,350 contribution award in connection with mortgage satisfaction case settlement); Final Approval Order and Judgment of Dismissal with Prejudice, *Rosette v. Countrywide Home Loans, Inc.*, Cuyahoga C.P. No. CV-472898 (February 26, 2009) (awarding \$2,950,000 in attorneys’ fees (approximately 33% common fund), \$65,000 in costs, and \$5,000 contribution award per plaintiff in connection with mortgage satisfaction case settlement); Final Approval Order and Judgment of Dismissal with Prejudice, *Piro v. National City Bank*, Cuyahoga C.P. No. CV-02-468015 (July 22, 2008) (awarding \$3,068,950 in attorneys’ fees (approximately 34% of common fund), \$7,431 in costs, and \$3,500-\$5,000 contribution award per plaintiff in connection with mortgage satisfaction case settlement); Final Approval Order and Judgment of Dismissal with Prejudice, *Pittman v. Chase Home Finance LLC*, Cuyahoga C.P. No. CV05 571902 (June 3, 2011) (awarding \$197,600 in attorneys’ fees (approximately 40% of

previously concluded that a substantially similar application filed by Class Counsel, Jeffrey Goldenberg, was “reasonable.”¹¹ And Judge Robert Winkler, likewise, approved a fee of 33% from to Class Counsel Jeffrey Goldenberg and Joseph M. Lyon in a class settlement providing a reversionary common fund of \$1,750,000.¹²

Finally, the specific fee amount has been fully disclosed in the Motion for Preliminary Approval, and in three separate forms of Class Notification.¹³ To date, no objections have been raised about the amount of attorneys’ fees requested.

For all of these reasons, Class Counsel requests that the Court award \$649,935.00 as attorneys’ fees.

III. CLASS COUNSEL’S REQUEST FOR COST REIMBURSEMENT SHOULD BE APPROVED

“Under the common fund doctrine, class counsel is entitled to reimbursement of all reasonable out-of-pocket expenses and costs in the prosecution of claims, and in obtaining settlement, including but not limited to expenses incurred in connection with document productions, consulting with and deposing experts, travel and other litigation-related expenses.”

In re Cardizem CD Antitrust Litig., 218 F.R.D. 508, 535 (E.D. Mich. 2003). “[T]he categories of

common fund), \$3,000 in costs, and \$5,000 contribution award to plaintiff in connection with mortgage satisfaction case settlement).

¹¹ See Final Order and Judgment Approving Settlement, Certifying Class for Settlement Purposes, Awarding Class Counsel Attorneys’ Fees and Dismissing Action with Prejudice, *Kanet v. Third Federal Savings & Loan Assoc. of Cleveland*, Hamilton C.P. No. A 1302476 (Mar. 11, 2014) (awarding \$336,700 in attorneys’ fees (33% common fund), \$983 in costs, and \$2,350 contribution award in connection with mortgage satisfaction case settlement).

¹² See also Final Order and Judgment Approving Settlement, Certifying Class for Settlement Purposes, Awarding Class Counsel Attorneys’ Fees and Dismissing Action with Prejudice, *Wade v. U.S Bank National Association C.P.* No. A1501522 (September 26th, 2017) (awarding \$580,011 in attorneys’ fees (33% of common fund), \$3,263 in costs, and \$3,500 contribution award in connection with mortgage satisfaction case settlement).

¹³ See Class Notices, attached as Exhibits A(1)(Post Card/Claim Form Notice), A(2)(Short Form Notice) and A(3)(Long Form/website Notice) submitted and revised with the assistance of the Court along with the Motion for Order Preliminarily Approving Class Action Settlement.

expenses for which Plaintiffs' counsel seek reimbursement are the type routinely charged to hourly fee-paying clients and thus should be reimbursed out of the settlement fund ... [including] the cost of experts and consultants ... computerized research; travel and lodging expenses; photocopying cost; filing and witness fees; postage and overnight delivery; and the cost of court reporters and depositions.” *New Eng. Health Care Emples. Pension Fund v. Fruit of the Loom, Inc.*, 234 F.R.D. 627, 635 (W.D. Ky. 2006) (approving expenses submitted pursuant to these categories).

Class Counsel has incurred, to date, \$ 21,268.09 in costs and expenses.¹⁴ As set forth in the Affidavit of Joseph Lyon, each expense for which Class Counsel seeks reimbursement was necessary and directly related to this litigation, including the costs for the mediator.¹⁵ Accordingly, Class Counsel respectfully requests that the Court award \$ 21,268.09 in expense reimbursement to Class Counsel.

IV. CLASS REPRESENTATIVES HAVE EARNED A SERVICE AWARD

The Settlement Agreement also provides that Class Counsel will apply to the Court for a \$2,500 service award for each of the Class Representatives.¹⁶ Class Counsel moves for the approval of this contribution award under principles of equity and prior practice in this County¹⁷ and other Ohio Courts.¹⁸ At the inception of this action, Plaintiffs indicated their desire and

¹⁴ Affidavit of Joseph Lyon, ¶ 10.

¹⁵ *Id.*

¹⁶ Settlement Agreement, Section 72, attached as Exhibit A to the Motion for Order Preliminarily Approving Class Action Settlement, filed on June 23, 2022.

¹⁷ *See supra*, footnote 4, 9 and 10.

¹⁸ *See, e.g., Bert v. AK Steel Corp.*, S.D. Ohio No. 1:02-CV-467, 2008 WL 4693747, at *1 (Oct. 23, 2008) (approving \$10,000 incentive award to each class representative); *Birr v. Amica Mut. Ins. Co.*, S.D. Ohio No. 1:08cv124, 2011 WL 1429171, at *1 (April 14, 2011) (adopting magistrate's Report and Recommendation approving incentive payment to the Class Representative of \$5,000).

willingness to undertake the responsibilities and fiduciary duties on behalf of the class.¹⁹ This is a voluntary obligation that goes well beyond the pursuit of their individual claims, and Plaintiffs fulfilled their duties to the Class up to the present moment. Moreover, Plaintiffs were actively involved in the litigation. They reviewed and approved the complaint, gathered relevant documents and provided them to Class Counsel, followed the litigation process, and communicated with Class Counsel on a regular basis.²⁰ Without their willingness to undertake these obligations on behalf of the Class, the recovery in this case for the benefit of thousands of Ohio Class Members would not have occurred.

Accordingly, Class Counsel respectfully requests that the Court award \$2,500 to each of the three class representatives (James Jones, Derishia Smith, and Tommie Shearer) for their time and effort on behalf of all Class Members

V. CONCLUSION

Based upon the foregoing, Class Counsel respectfully requests that this Court award: (1) \$649,935.00 as fair and reasonable attorneys' fees; (2) \$ 21,268.09 for reimbursement of the expenses necessarily incurred in prosecution of this action on behalf of the Class; and (3) \$2,500 service awards for each of the three Class Representatives.

¹⁹ Lyon Affidavit ¶ 10.

²⁰ *Id.*

Respectfully submitted,

/s/ Joseph M. Lyon

Joseph M. Lyon (0076050)
THE LYON FIRM, LLC
2021 Auburn Ave.
Cincinnati, Ohio 45219
Telephone: (513) 381-2333
Facsimile: (513) 721-1178
jlyon@thelyonfirm.com

Jeffrey S. Goldenberg (0063771)
Todd B. Naylor (0068388)
GOLDENBERG SCHNEIDER, LPA
4445 Lake Forest Drive, Suite 490
Cincinnati, OH 45242
Telephone: (513) 345-8291
Facsimile: (513) 345-8294
jgoldenberg@gs-legal.com
tnaylor@gs-legal.com
Marc E. Dann (0039425)
Brian D. Flick (0081605)
DANN LAW
P.O. Box 6031040
Cleveland, Ohio 44103
(216) 373-0539 telephone
(216) 373-0536 facsimile
notices@dannlaw.com

Attorneys for Plaintiffs and the Class

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing has been filed with the County Electronic Filing System and served by electronic mail upon all counsel for Defendant.

/s/ Joseph M. Lyon
Joseph M. Lyon

EXHIBIT A

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

IN RE: SOUTHERN OHIO HEALTH
SYSTEMS DATA BREACH

Case No. A2101886

JUDGE JENNIFER BRANCH

AFFIDAVIT OF JOSEPH LYON IN
SUPPORT OF CLASS COUNSEL'S
APPLICATION FOR ATTORNEYS'
FEES, COSTS AND EXPENSES, AND
CLASS REPRESENTATIVE
CONTRIBUTION AWARD

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

I, Joseph Lyon, being first duly sworn and cautioned, depose and state as follows:

1. I am a founding partner in the law firm, The Lyon Firm, LLC and I, along with Jeffrey S. Goldenberg, and Brian Flick represent the Plaintiffs James Jones, Derishia Smith, and Tommie Shearer and the Class in this action.

2. I am admitted to the practice of law by the Supreme Court of Ohio (2003) and the Supreme Court of Kentucky (2011). I am a member in good standing of the Ohio and Kentucky Bar and have never been the subject of any disciplinary proceeding. I am also licensed, in good standing, and have practiced in the following Federal District Courts: United States District Court, Southern District of Ohio; United States District Court, Northern District of Ohio; United States District Court, Colorado; United States District Court, Northern District of Illinois; United States District Court, Eastern District of Kentucky; United States District Court, Eastern District of Michigan; United States District Court, Eastern District of Wisconsin; United States District Court, Nebraska; United States District Court, North Dakota; and United States Court of Appeals, 6th Circuit.

3. I have been appointed in Federal and State courts to numerous class counsel, executive committee, steering committee, and other leadership positions in complex litigation throughout the country, many of which involve data security and privacy matters. See, Lyon Firm Profile, Attached as **Exhibit 4**.

4. As Class Counsel, my firm has been centrally involved in all aspects of this litigation from the initial investigation to the present, and the description set forth below is based upon my personal knowledge.

5. The Settlement Agreement reached by the parties is the result of hard bargaining and compromise by both sides.

6. Negotiations as to the attorneys' fees percentage, expense and cost reimbursement, and contribution award occurred after the parties reached agreement on all of the substantive terms of this settlement.

7. Class Counsel prosecuted this case on a wholly contingent basis with no guarantee that their costs would ever be recovered or their fees ever paid. Written Contingency Fee agreements were entered into with James Jones, Derishia Smith, and Tommie Shearer. Class Counsel has not received any compensation or reimbursement for expenses during the pendency of this action.

8. My firm and my co-counsel devoted and expended significant time in prosecuting this action, at the opportunity cost of working on other matters.

9. Class Counsel expended substantial time and resources advancing this litigation and resolving the matter with broad relief offered to the Class. Counsel compiled, exchanged, reviewed, and analyzed information involving complex issues of data security, and briefed novel issues of law. It was only after extensive briefing, and the exchange of information, that the parties


participated in a mediation process that eventually resulted in this settlement. Class Counsel then filed a motion seeking preliminary approval of that settlement, which required additional revisions and effort to finalize the settlement.

10. At the inception of this action, Plaintiffs indicated their desire and willingness to undertake the responsibilities and fiduciary duties on behalf of the class and agreed to those obligations in their representation agreement. Plaintiffs were actively involved in the litigation. They reviewed and approved the complaint, gathered relevant documents and provided them to Class Counsel, followed the litigation process, and communicated with Class Counsel on a regular basis.

11. Class Counsel also advanced substantial expenses to benefit the class. My firm and my co-counsel from Goldenberg Schneider, LPA incurred out-of-pocket expenses during this litigation, with the risk of non-repayment if the litigation was not successful. The expense records collected through October 7th, 2022 indicate that Class Counsel collectively advanced \$ 21,268.09 that were reasonable and necessary to prosecute and resolve the case to benefit the Class: The Lyon Firm, LLC advanced \$ 3,509.21; Goldenberg Schneider, LPA advanced \$ 13,980.23 and Dann Law advanced \$3,778.65. I reviewed my firm's expense records and the expense records of co-counsel in this litigation, and I believe that these expenses were necessary, reasonable, and directly related to this litigation. The expenses include those items for which the firm ordinarily bills its clients. Attached hereto as **Exhibits 1, 2, 3** are charts listing the categories of expenses for which the Lyon Firm, LLC, Goldenberg Schneider, LPA, and Dan Law seek reimbursement as well as the amount of reimbursement sought for each such category.

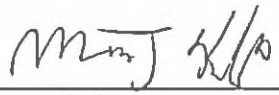
FURTHER AFFIANT SAYETH NAUGHT.

Executed on October 7th, 2022.



JOSEPH LYON, ESQ.

Sworn to before me, a Notary Public, this 7th day of October, 2022.



Notary Public Martin J. Kraft, Commission DNE



2754 Erie Avenue
Cincinnati, Ohio 45208
P: 513-331-2333 | F: 513-766-9011
TheLyonfirm.com

DATE 10/7/2022

**IN RE SOUTHERN OHIO DATA BREACH
CASE NO. A2101886**

CASE EXPENSES

Date	Description	Amount
6/11/2021	Unreimbursed Filing Fees – Highland County	\$135.22
6/11/2021	Mileage Reimbursement – Round trip to Highland County Clerk of Courts to file Complaint (107.2 miles at \$0.55/mile)	\$58.96
9/24/2021	Mileage Reimbursement – Round trip to Highland County Clerk of Courts to file Amended Complaint (107.2 miles at \$0.55/mile)	\$58.96
11/5/2021	Mileage Reimbursement – Round trip to Highland County Clerk of Courts to file Memo in Opposition to Motion to Dismiss (107.4 miles at \$0.55/mile)	\$59.07
3/29/2022	Mediation	\$3,197.00
Total		\$3,509.21

THE LYON FIRM

GOLDENBERG SCHNEIDER, LPA
Southern Ohio Health Systems Data Breach

Expenses:

DESCRIPTION	AMOUNT
In-House Photocopies	\$83.19
Postage/Overnight Shipping	\$48.82
Legal Research	\$1,029.52
Mediation (GS portion)	\$12,818.70
TOTAL	\$13,980.23

IN RE Rose M. Boshears v. TriHealth, Inc. In Re: Southern Ohio Health Systems Data Breach MONTHLY EXPENSE REPORT

In re Rose M. Boshears v. TriHealth, Inc. (Hamilton Co)

Date Submitted:	
Certified By:	Name
Firm Name:	DannLaw
Reporting Period:	

Monthly Expense Total
\$3,778.65

Category Codes: 1. Assessment Fees 2. Federal Express / Local Courier, etc. 3. Postage Charges 4. Facsimile Charges 5. Long Distance 6. In-House Photocopying 7. Outside Photocopying 8. Hotels 9. Meals 10. Mileage 11. Air-Travel 12. Ground Transportation (ie, rental car, taxi) 13. Deposition Costs 14. Lexis/Westlaw/PACER 15. Witness and Expert Expenses 16. Court Fees 17. Investigation Fees / Service Fees 18. Hearing and Trial Transcripts 19. Miscellaneous (Describe)

***** ALL ORIGINAL RECEIPTS MUST BE MAINTAINED AND PROVIDED UPON REQUEST*****

Last Name, First Name	Date (00/00/0000)	Category Code (1-19)	Detailed Description	Amount	Explanation for any late expenses
White, Kimberly	5/11/2021	16	Filing Fee for Complaint with Jury Demand	\$ 607.95	
Snyder, Mary Beth	3/8/2022			\$ 3,167.00	E121 Arbitrators/mediators
Kilbane, Lynn	6/20/2022	14	03/04/2022 Pacer Charges	\$ 3.70	

FIRM PROFILE

The Lyon Firm, LLC is a Cincinnati, Ohio based law firm representing individuals nationwide in class action and product liability litigation. Joe Lyon founded the Firm in 2006 following his work as an associate for a national complex litigation firm. Over the past 19 years, Mr. Lyon has represented thousands of individual clients in over 47 Multi-District Litigations (“MDL”) in both federal and state court consolidated actions. Mr. Lyon has also served, and is serving, as co-lead counsel, on Executive and Steering Committees, and as plaintiffs’ counsel in over 60 class actions. These complex cases have involved a diverse range of legal, scientific, regulatory, and public policy issues involving medical devices, pharmaceutical products, toxic consumer products, antitrust, and data privacy matters.

Recent co-lead class counsel roles include, among others, *Hawkins v. Navy Federal Credit Union*, Case No: 1:19-cv-01186 (U.S District Court, E.D. of VA)(Final Approval of \$9.25 million nationwide non-reversionary common fund settlement for TCPA violations); *Devine v. Health Aid of Ohio*, Case No: CV-21-948117(Cuyahoga County)(Final Approval granted in data breach class action for claims made settlement valued at \$12.5 million); *In Re Southern Ohio Health System Data Breach*, Case No:A210886 (Hamilton County, OH)(Preliminary Approval granted for nationwide non-reversionary common fund settlement of \$1.95 million); *Migliaccio v. Parker Hannifin Corp.*, Case No. 1:22-cv-00835 (U.S. District Court, N.D. of OH)(Interim co-lead class counsel in data breach class action impacting over 100,00 current and former employees); *Alvarado v. JDC Healthcare Management, LLC*, Cause No.DC-22-03137 (Dallas County, TX)(Interim co-lead class counsel in data breach action impacting over a million dental patients); *Forslund v. R.R. Donnelley & Sons Co.*, Case No: 1:22-cv-04260 (U.S. District Court, N.D. of IL)(Interim co-lead class counsel in data breach impacting over 100,000 customers); and *Rodriquez v. Professional Finance Co., Inc.*, Case No: 1:22-cv-01679 (U.S. District Court, Dist. of CO)(Interim co-lead class counsel in data breach action impacting over a million customers).

The Firm has a long history of successful MDL work having developed supportive evidence on numerous specific causation issues to support claims within the MDL case structure. In addition, Mr. Lyon has worked alongside many of the leading Plaintiff Firms on leadership committees to develop common benefit evidence on general liability and general causation. Notably, Mr. Lyon has served on several MDL Discovery Committees, where he has participated in large scale e-discovery document reviews, 30(b)(6) depositions, expert development, medical literature surveys, FDA regulatory reviews, and bellwether trial preparation: e.g., MDL 1748: *In re Testosterone Replacement Therapy*; MDL 2327: *In Re Ethicon Pelvic Repair Systems*; and MDL 1598: *In Re: Ephedra Products Liability Litigation*. Moreover, Mr. Lyon has contributed as a member of a bellwether trial team that obtained a favorable Plaintiff’s verdict, which assisted in a global resolution of the *Actos* litigation. (*Wisniewski v Taketa Pharmaceuticals America Inc.* Case No: 120702272 (Philadelphia County, PA).

Finally, Mr. Lyon has dedicated much of his career to representing individual plaintiffs in catastrophic single event litigation. This rewarding work has provided families with answers to difficult questions of liability and has resulted in numerous life changing settlements that have assisted with long term medical needs and compensation for significant financial and personal loss. The single event litigation has required the Firm to consistently learn new subject matters, develop new case themes, and create new relationships. These cases have addressed a variety of legal, medical, and engineering issues arising from automotive product defects, firearm defects, medical malpractice, workplace injuries, toxic lead exposure, environmental contamination, and asbestos exposure.



FIRM PROFILE

CURRICULUM VITAE

Professional Experience

- The Lyon Firm, LLC; Founder & Managing Partner (9/2006-Present)
- Lopez, Hodes, Restaino, Milman & Skikos, A Law Corp.; Associate

Admissions to Practice Law

- Ohio
- Kentucky
- United States District Court, Southern District of Ohio
- United States District Court, Northern District of Ohio
- United States District Court, Colorado
- United States District Court, Northern District of Illinois
- United States District Court, Eastern District of Kentucky
- United States District Court, Eastern District of Michigan
- United States District Court, Eastern District of Wisconsin
- United States District Court, Nebraska
- United States District Court, North Dakota
- United States Court of Appeals, 6th Circuit
- United States Court of Appeals for Veterans Claims

Education

- Chicago Kent College of Law, Illinois Institute of Technology, Chicago, IL, J.D. (2002)
 - Honors:
 - Federal Judicial Externship: United States District Court for the Northern District of Illinois, Judge William Hibbler; (January 2001-September 2001)
 - Law Review: Member of Chicago-Kent Journal of International and Comparative Law.
- Loyola University, Baltimore MD, B.A. in Political Science (1999)
 - International Study:
 - Katholieke Universiteit, Leuven, Belgium (9/1997-6/1998)
 - St. Louis University, Madrid, Spain (9/1998-12/1998)



FIRM PROFILE

Representative Lead Class Counsel Experience:

- ***Hawkins v. Navy Federal Credit Union*, Case No: 1:19-cv-01186** (E.D. of VA): Appointed co-lead class counsel in TCPA class action. Judge Brinkema approved nationwide class and non-reversionary common fund settlement of \$9,250,000 providing monetary compensation for class of over 66,000.
- ***Wade v. U.S. Bank National Association*, Case No: A1501522** (Hamilton County, Ohio): Appointed co-lead class counsel in state mortgage satisfaction class action. Judge Winkler approved an Ohio class and common fund settlement of \$1,750,000.00 providing monetary compensation to a class of over 45,000.00 mortgage holders.
- ***Devine et al, v. Health Aide of Ohio*, Case No: CV-21-948117** (Cuyahoga County, OH): Appointed as co-lead class counsel in consolidated data breach class action involving 141,149 medical patients; Judge Russo granted Final Approval for a claims made nationwide settlement providing monetary benefits and additional identity theft protection valued at over \$12.5 million.
- ***In Re Southern Ohio Health System Data Breach*, Case No: A2101886** (Hamilton County, OH): Serving as proposed interim co-lead counsel in consolidated data breach class action impacting two Ohio hospital systems; Preliminary approval granted for nationwide non-reversionary common fund settlement of \$1,950,000.00 that provides monetary compensation to 420,433 class members.
- ***Engle v. Talbert House*, No. A 2103650** (Hamilton County, OH): Serving as proposed interim co-lead class counsel in a data breach class action impacting over 300,000 medical patients; Preliminary approval granted for nationwide claims made settlement providing monetary benefits and additional identity theft protection to class members impacted by the data breach.
- ***Migliaccio v. Parker Hannifin Corp.*, Case No. 1:22-cv-00835** (U.S. District Court, N.D. of OH)(Appointed interim co-lead class counsel by Judge Polster in data breach class action against multi-national manufacturer impacting thousands of current and former employees.)
- ***Tucker v. Marietta Area Health Care, Inc.*, No. 2:22-cv-00184** (U.S. District Court, S.D. of OH): Serving as proposed interim co-lead in consolidated data breach class action involving ransomware attack on Ohio hospital that compromised the PII and PHI of thousands of patients. Motion to Dismiss fully briefed and pending, and case management order entered.
- ***Bae v. Pacific City Bank*, No. 21STCV45922** (Los Angeles County Superior Court, CA): Serving as proposed interim co-lead class counsel in a data breach class action involving thousands of CA residents under CCPA violations against a regional bank; Parties are working on mediation following briefing on Motions to Dismiss which was preliminarily denied.



FIRM PROFILE

- ***Miranda v. Xavier University***, No. 1:20-cv-00539 (U.S. District Court, S.D. of OH); Serving as proposed interim co-lead class counsel for nursing students in a class action arising from the breach of contract to provide clinical education and experience through the coursework. Motion to Dismiss denied in part and granted in part. Discovery ongoing.
- ***Reynolds v. Concordia***, No. 21-cv-02560 (U.S. District Court, Minn.); Serving as proposed interim co-lead class counsel for nursing students in a class action arising from the breach of contract to provide clinical education and experience through the coursework. Motion to Dismiss denied in part and granted in part. Discovery ongoing.

Executive & Steering Committee Experience:

- ***Desue, et al. v. 20/20 Eye Care***, Case No: 21-CV-61275 (S.D. of FL; Appointed to Plaintiffs' Executive Committee in data breach class action impacting 3.2 million patients' personal and healthcare information. Motion to Dismiss denied in part and granted in part. Mediation ordered.
- ***Baker, et al. v. Parkmobile, LLC***, Case No: 1:21-CV-2182 (N.D. of GA; Appointed to Plaintiffs' Steering Committee in data breach class action impacting the personal information of over 21 million customers. Motion to Dismiss fully briefed and pending.
- ***MDL 1748 In Re: Testosterone Replacement Therapy Products Liability Litigation.*** Assisted in the formation of the litigation and the consolidation of over 4,000 cases before Judge Kennelly in the Northern District of Illinois. Performed document review and coding on regulatory and custodial files related to deceptive and off label marketing claims and adverse events; Developed consulting relationship with leading experts and created medical literature summaries; Organized deposition summaries for bellwether trials.
- ***MDL 2327 In Re: Ethicon, Inc. Pelvic Repair Systems Product Liability Litigation.*** Performed document review and coding on custodial files on product design, labelling, opinion leaders, adverse events, and regulatory approval; Assisted in preparation for corporate 30(b)(6) depositions, opinion leader depositions, and bellwether trials.
- ***In Re: Actos (Pioglitazone) Products Liability Litigation. Wisniewski v. Takeda Pharmaceuticals et al.*** (Case No. 120702272) Co-Counsel for bellwether trial in Philadelphia County. Jury awarded \$2,340,000.00 in compensatory damages.
- ***MDL 1598 In Re: Ephedra Products Liability Litigation:*** Coordinated GNC document review, assisted in deposition preparation for 30(b)(6) depositions, and participated in bellwether trial support.



FIRM PROFILE

Representative Current Multi District Litigation (Case Specific Work):

- MDL 2738 In Re: Johnson & Johnson Talcum Powder
- MDL 2885 In Re: 3M Product Liability Litigation
- MDL 3004 In Re: Paraquat Product Liability Litigation
- MDL 2974 In Re: Paraguard IUD Product Liability Litigation
- In Re Pam Cooking Spray Consolidated Actions (Cook County, IL)

Representative Past Multi District Litigation (Case Specific Work):

- MDL 2741 In Re: Roundup Products Liability Litigation
- MDL 2441 In Re: Stryker Rejuvenate and ABG II Hip Implant Litigation
- MDL 2768 In Re: Stryker LFIT V-40 Femoral Head Product Liability Litigation
- MDL 2391 In Re: Biomet M2A Magnum Hip Implant Products Liability Litigation
- MDL 2734 In Re: Abilify (Aripiprazole) Products Liability Litigation
- MDL 2244 In Re: Depuy Orthopaedics, Inc. Pinnacle Hip Implant Litigation
- MDL 1748 In Re: Testosterone Replacement Therapy Products Liability Litigation.
- JCCP 4887 In Re Essure Product Cases
- MDL 2591 In Re: Syngenta AG MIR 162 Corn Litigation
- MDL 2000 In Re: Yaz/ Yasmin/ Ocella Litigation (Philadelphia Consolidated Actions)
- MDL 2197 In Re: Depuy Orthopaedics, Inc., ASR Hip Implant Products Liability Litigation
- MDL 1871 In Re: Avandia Marketing, Sales Practices and Products Liability Litigation
- MDL 1598 In Re: Ephedra Products Liability Litigation
- MDL 1905 In Re: Medtronic, Inc. Sprint Fidelis Leads Products Liability Litigation
- MDL 1769 In Re: Seroquel Products Liability Litigation
- MDL 1928 In Re: Trasylol Products Liability Litigation
- MDL 1785 In Re: Bausch & Lomb Inc. Contact Lens Solution Products Liability Litigation
- MDL 1657 In Re: Vioxx Marketing, Sales Practices and Products Liability Litigation
- MDL 2226 In Re: Darvocet, Darvon, and Propoxyphene Products Liability Litigation
- MDL 2327 In Re: Ethicon, Inc. Pelvic Repair Systems Products Liability Litigation
- MDL 2325 In Re: AMS, Inc., Pelvic Repair System Products Liability Litigation
- MDL 2187 In Re: C.R. Bard, Inc., Pelvic Repair System Products Liability Litigation
- MDL 2387 In Re: Coloplast Corp. Pelvic Support Systems Products Liability Litigation
- MDL 2326 In Re: Boston Scientific Corp. Pelvic Repair Systems Products Liability Litigation
- MDL 2299 In Re: Actos (Pioglitazone) products Liability Litigation
- MDL 1842 In Re: Kugel Mesh Hernia Patch Products Liability Litigation
- MDL 1708 In Re: Guidant Implantable Defibrillators Product Liability Litigation
- MDL 1905 In Re: Medtronic Sprint Fidelis Leads Product Liability Litigation
- In Re Depo Provera: New Jersey Consolidated State Litigation



FIRM PROFILE

Representative Single Event Settlements

- ***Estate of Gabrielle Walker v. The Toledo Hospital*** (2021) Lucas County, Ohio, Case No: G-4801. Lead counsel in medical malpractice/ wrongful death case involving allegations of negligent discharge of a suspected child abuse patient. The discharge resulted in returning the child to the suspected home environment where she sustained terminal injuries that evening. The four years of litigation entailed lead counsel taking over twenty depositions, preparing and disclosing four liability experts, filing several motions to compel discovery (ESI and 30B5 Witnesses) that the Court granted, and obtaining the Court's denial of two motions for summary judgment. The parties entered a confidential settlement two months before trial after months of negotiation.
- ***Murphy v. University Hospital*** (2019) Hamilton County, Ohio A-18-03027. Lead Counsel in medical malpractice case involving the alleged misdiagnosis of cancer and unnecessary operation to remove 17 lymph nodes. The patient was cancer free and the unnecessary surgery left her with permanent lymphedema. Confidential Settlement following disclosure of expert reports on liability, causation and life care plan.
- ***Gray v. Graham KTM Sport Motorbikes*** (2018) N. Dist. of Mississippi Case No: 3:17-cv-092. Lead counsel in automotive product liability matter involving a recalled accelerator of a motor-cross bike. The recall was noticed due to the accelerator sticking and resulting in unintended acceleration. Plaintiff experienced this event losing control, whereby the bike fell onto him as he attempted to jump from the out-of-control bike. His arm was trapped in the rear wheel resulting in catastrophic amputation. Confidential settlement following limited discovery and disclosure of life care plan.
- ***Harrell et al. v. WWS Associates*** (2018) Hamilton County, Ohio, Case No: A1600701. Lead counsel in lead exposure case involving the secondary exposure of two minor children to industrial lead dust. It was alleged the children were poisoned when their father returned home from a recycling job that did not provide adequate protective clothing or require showers before returning home. The children suffered neurological injuries related to elevated lead levels. Confidential settlement following factual discovery and disclosure of expert reports on causation and damages.
- ***Lemon v. FMK Firearms, Inc. et al.*** (2016) E. Dist. of KY Case No: 2:15-cv-00128. Lead Counsel in complex product liability case involving a defective handgun that was subject to a recall due to drop-fire risks. Plaintiff suffered severe injuries including compartment syndrome when gun was accidentally dropped and fired. Confidential settlement following initial factual discovery.



FIRM PROFILE

- ***Waters v. F&P America MFG, Inc.*** (2016) Miami County, Ohio Case No: 15-103. Lead Counsel. Workplace intentional tort claim involving a corporate policy to circumvent a perimeter cage designed to protect workers from hydraulic equipment malfunction. Plaintiff suffered catastrophic amputation of multiple fingers when a machine misfired. Confidential settlement following corporate depositions and while motion for summary judgment on employer intentional tort and workers compensation immunity issues was pending.
- ***Estate of Ralph Jamison v. Continental Appliances, Inc.*** (2013) Adams County, Ohio Case No. CVB 20120499. Lead Counsel in complex Product Liability case involving a defective propane wall heater that resulted in severe burn injuries and wrongful death. Confidential Settlement following motion to compel documents was granted and 30(b)(5) deposition.
- ***Estate of Joseph Ponsi v. RCD Sales, Inc.*** (2012) Ashland County, Ohio Case No. 12-CVI-017). Lead Counsel in dealership negligence involving the sale of a recreational towing vehicle that exceeded towing capacity of tow vehicle resulting in rollover and wrongful death. Confidential settlement following multiple depositions on liability and disclosure of expert reports.
- ***Armesia Thomas v. General Motors et al.*** (2011) E. Dist. of KY Case No. 08-228-ART. Lead Counsel in complex Product Liability action involving claims of defective seat belt design resulting in catastrophic spinal cord injury to a 19 year old female. Confidential settlement with General Motors and Takata Defendants following full factual discovery and disclosure of expert reports and life care plan.
- ***Michael Urchak v. Donnell Ford Lincoln Mercury of Salem, Inc.*** (2010) Mahoning County, Ohio Case No 08-CV-3700). Lead Counsel in dealership negligence causing mechanical failure and loss of control of vehicle resulting in spinal cord injury. Confidential Settlement following full factual discovery and disclosure of expert reports and life care plan.
- ***Charles & Jennifer Briner, Individually and on Behalf of Christopher Briner, A Minor v Daimler Chrysler Corporation.*** (2007) (Richland County, Ohio Case No. 05-CV-371). Co-lead counsel in complex product liability action involving claims of defective seat belt buckle resulting in inadvertent buckle release and catastrophic brain injury to a minor. Confidential settlement two weeks before trial following full factual discovery and expert disclosures on liability and life care plan.
- ***Marlene Lewis et al v. Alex Saba, M.D.*** (2006) Hamilton County, Ohio, Case No. A0501599. Co-lead counsel in medical malpractice claims arising from the failure to diagnose breast cancer resulting in cancer progression, loss of survival, and additional invasive medical care. Confidential Settlement a few months before trial following full discovery and expert disclosures on liability and damages.



FIRM PROFILE

Memberships & Board Positions

Attorneys Information Exchange Group (2006- Present)
American Association for Justice, Trial Magazine, Peer Review Panel (2018-Present)
American Association for Justice, TRT Litigation Group Co-Chair (2014-Present)
American Association for Justice Litigation Group Leaders Council (2014- Present)
American Association for Justice, Member (2003- Present)
American Association for Justice, “New Lawyers Board of Governors” (2004-2013)
Kentucky Association for Justice (2011- Present)
National Trial Lawyers (2009-Present)
Ohio Association for Justice (2003-2007; 2013-Present)
Ohio Association for Justice, Product Liability Section Chair (2014-2015)

Publications & Presentations

- *Mass Torts in State Court*. OAJ Summer Convention, Columbus, OH (2017)
- *Managing Client Expectations*. OAJ Summer Convention. Columbus, OH (2015)
- *The Wheels of Justice: Mass Torts in State Courts*. OAJ Quarterly. Product Liability Section. (2015)
- *“Low T”- The Creation of a Disease*. OAJ Quarterly. Product Liability Section. (2014)
- *Ethical Aspects of Mass Tort Marketing*. AAJ Summer Convention. Baltimore, MD (2014)
- *Testosterone Replacement Therapy MDL Update and Case Criteria*. AAJ Summer Convention. Baltimore, MD (2014)
- *Testosterone Replacement Therapy --Specific Causation*. AAJ Mass Tort Update Seminar. San Diego, CA (2014)
- *Testosterone Replacement Therapy –MDL Case Management Orders*. AAJ Mass Tort Update Seminar. Santa Barbara, CA (2014)
- *Testosterone Replacement Therapy --Causes of Action*. AAJ Emerging Mass Tort Seminar. Louisville, KY (2014)
- *Parallel Claims & Reporting Requirements: New Motivation for Drug Manufacturers to Give Adequate Warning*. OAJ Quarterly. Product Liability Section (2013)
- *Where to Begin Your Search for the Smoking Gun: Organizing Your Strategy and Informal Discovery*. National Business Institute Seminar. Cincinnati, OH (2010)
- *Written Discovery Strategies*. National Business Institute Seminar. Cincinnati, OH (2010)



FIRM PROFILE

- *A Separate Piece in Seeking Justice: Civil Themes and Skills in Public Defense.* AAJ, Criminal Law Section, Vol. 16, No.2 Winter (2009)
- *The Weight of Expert Testimony.* National Business Institute Seminar. Cincinnati, OH (2009)
- *Punitive Damages: Current Trends and Strategies.* National Business Institute Seminar. Cincinnati, Ohio (2009)
- *Jury Selection: Your First Trial.* Northern Kentucky College of Law. (2009)
- *Utilizing ATLA Resources for Law Students.* University of Cincinnati College of Law. (2003)

Honors & Awards

- Super Lawyers (Class Action and Mass Torts) (2018, 2019, 2020, 2021, 2022, 2023)
- Super Lawyers, Rising Stars (Class Action and Mass Torts) (2012, 2013, 2014, 2015, 2016)
- National Trial Lawyers: Top 100 Trial Lawyers for Ohio (2009-Present)
- National Trial Lawyers: Top 20 Mass Tort Lawyers (2018- Present)