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Co-Lead Counsel

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE AMERICAN FINANCIAL
RESOURCES, INC. DATA BREACH
LITIGATION

Civil Action No. 22-1757 (MCA) (JSA)

**DECLARATION OF JAMES E.
CECCHI IN SUPPORT OF THE
MOTION FOR FINAL APPROVAL
OF CLASS ACTION
SETTLEMENT AND FINAL
CERTIFICATION OF THE
SETTLEMENT CLASS AND
MOTION FOR AWARD OF
ATTORNEYS' FEES, PAYMENT
OF LITIGATION EXPENSES,
AND PAYMENT OF SERVICE
AWARDS TO CLASS
REPRESENTATIVES**

JAMES E. CECCHI, ESQ., of full age, hereby declares under penalty of perjury as follows:

1. I am an attorney licensed to practice in New Jersey and am a partner of Carella, Byrne, Cecchi, Brody & Agnello, P.C., and have been named as Co-Lead

Counsel for Plaintiffs in the above matter. In such capacity, I am fully familiar with the facts contained herein.

CASE BACKGROUND AND PROCEDURAL HISTORY

2. After the data breach announced by AFR on March 9, 2022 (the “Incident”), AFR sought to provide notice to those 216,645 people potentially affected that their private and confidential medical information was compromised.

3. Shortly thereafter, Plaintiffs, and other putative class members, initiated legal proceedings in the United States District Court for the District of New Jersey. An initial complaint was filed on March 29, 2022 (No. 22-1757). ECF No. 1.

4. On May 12, 2022, I sent a letter to the Court regarding Consolidation of Related Actions and Appointment of Interim Lead Counsel. ECF No. 8.

5. On June 8, 2022, I sent a letter to the Court enclosing a Proposed Stipulation and Order Regarding Consolidation, Appointment of Interim Class Counsel and Scheduling. ECF No. 11.

6. On June 10, 2022, the Court entered a Stipulation and Order, consolidating four cases (Nos. 22-1757, 22-1878, 22-2392, and 22-2642) under No. 22-1757 for all purposes. ECF No. 13.

7. On July 8, 2022, Plaintiffs filed their Consolidated Class Action Complaint, asserting claims for negligence, negligence *per se*, unjust enrichment,

breach of confidence, invasion of privacy (intrusion upon seclusion), breach of implied contract, and violations the New Jersey Consumer Fraud Act (“NJCFA”), the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), the Maryland Consumer Protection Act (“MCPA”), the Maryland Personal Information Protection Act (“MPIPA”), and the Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”). ECF No. 20.

8. On August 22, 2022, AFR filed a motion to dismiss under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. ECF No. 29.

9. On October 6, 2022, Plaintiffs filed their response brief in opposition to the motion to dismiss. ECF No. 31.

10. On December 8, 2022, Co-Lead Counsel submitted a letter to the Court enclosing a Proposed Confidentiality and Rule 502(d) Order (ECF No. 34), which Magistrate Judge Allen signed on December 14, 2022 (ECF No. 35).

11. The Parties engaged in mediation on February 15, 2023, with the Honorable Faith S. Hochberg (ret.), which did not result in an agreement.

12. On March 29, 2023, the Court granted in part and denied in part AFR’s motion to dismiss. ECF No. 40.

13. On April 6, 2023, Co-Lead Counsel submitted a letter to the Court requesting an Initial Scheduling Conference. ECF No. 42.

14. On April 24, 2023, Co-Lead Counsel submitted a letter to the Court enclosing a Proposed ESI Protocol (ECF No. 45), which Magistrate Judge Allen signed on April 25, 2023 (ECF No. 47).

15. On April 28, 2023, Plaintiffs filed the operative First Amended Consolidated Class Action Complaint. ECF No. 46.

16. On June 2, 2023, the Court entered an Order granting Plaintiffs' renewed request to schedule an Initial Scheduling Conference (ECF No. 42). ECF No. 48. The Court then entered a Letter Order setting the Initial Conference for July 12, 2023. ECF No. 49.

17. On June 12, 2023, AFR moved to dismiss the First Amended Consolidated Class Action Complaint under Rules 12(b)(1) and 12(b)(6). ECF No. 50.

18. On June 23, 2023, Plaintiffs filed their response brief in opposition to AFR's motion to dismiss. ECF No. 53.

19. On July 12, 2023, Magistrate Judge Allen held the Initial Pretrial Conference and entered the Pretrial Scheduling Order. ECF No. 55.

20. On September 18, 2023, Magistrate Judge Allen held a Status Conference and entered a Text Order regarding the Parties' discovery disputes. ECF No. 59.

21. On December 4, 2023, Magistrate Judge Allen held another Status Conference. ECF No. 63.

22. On January 31, 2024, the Court issued an Order denying AFR's motion to dismiss under Rule 12(b)(1) and granting AFR's motion to dismiss under Rule 12(b)(6) as to Plaintiffs' Maryland Consumer Protection Act, Illinois Consumer Fraud Act, and New Jersey Consumer Fraud Act. *See* ECF No. 64.

23. On February 8, 2024, Magistrate Judge Allen held a status conference. ECF No. 68.

24. Discovery, including rolling document productions from both Parties over several months, occurred from June 2023 to February 2024, and both Defendant and Plaintiffs conducted searches for and collections of electronically stored information. Third party discovery was also sought. In total, over 36,000 documents were reviewed and produced.

25. The Parties re-engaged in settlement discussions with a mediation on February 16, 2024, before the Honorable Diane Welsh (ret.) and were able to reach an agreement in principal on the settlement of this matter.

THE TERMS OF THE SETTLEMENT

26. The proposed Settlement contains a number of components, including:
- a. A \$2.5 million non-reversionary Common Fund, which will be used to pay Settlement Claims, including:

- i. Automatic *pro rata* compensation to Settlement Class Members who submit Valid Claims;
 - ii. Service awards for class representatives; and
 - iii. Attorneys' fees and expenses.
- b. Defendant will also create an Out-of-Pocket Loss Benefit in which Settlement Class Members have the opportunity to submit Claims for documented, unreimbursed, out-of-pocket losses that are fairly traceable to the Incident. The Out-of-Pocket Loss Benefit shall provide up to a maximum of \$7,500 per person and is subject to an aggregate cap of \$1,000,000.
- c. Defendant will separately pay for a Credit Monitoring Benefit for every claimant that elects to receive such coverage, including:
 - i. one year of one credit bureau monitoring; and
 - ii. up to \$1,000,000 in identity theft insurance.
- d. Defendant has also agreed to delete the PII of any Settlement Class Member in its system to the extent allowable under all applicable state and federal laws or regulations, and to, within ninety days of the Settlement's Effective Date, certify via affidavit or sworn declaration from an AFR employee with the ability to legally bind AFR that it has deleted and/or made non-accessible such PII of Settlement Class Members to the extent allowable under state and/or federal laws or regulations.
- e. Defendant has further agreed to pay all notice costs related to the Settlement.

27. The Settlement includes a release wherein Plaintiffs, on behalf of themselves and the Settlement Class, release AFR and its related entities from all claims alleged, or which reasonably could have been alleged, arising out of or relating to any conduct, events, or transactions, prior to the date of preliminary approval of this Settlement Agreement related to the Incident. The Plaintiffs, on

behalf of themselves and the Settlement Class, also agreed to waive their rights under § 1542 of the California Civil Code, respecting unknown claims, and any similar state or federal laws.

28. The relief negotiated under the Settlement was carefully negotiated to address Settlement Class Members' alleged injuries as a result of the Incident and is, in Interim Co-Lead Class Counsel's assessment, fair, reasonable, and adequate.

29. On May 22, 2024, Plaintiffs filed their Unopposed Motion for Preliminary Approval of Class Action Settlement (ECF No. 74-1), which the Court granted on June 5, 2024 (ECF No. 76) ("Preliminary Approval Order").

THE NOTICE PLAN AND SETTLEMENT CLASS'S RESPONSE

30. Pursuant to the Preliminary Approval Order, Defendant selected Epiq Global ("Epiq") as the Settlement Administrator. Epiq implemented the Notice Plan and disseminated notice to the Settlement Class in compliance with the Preliminary Approval Order.

31. Annexed hereto as Exhibit A is the Declaration of Cameron R. Azari, Esq. Regarding Implementation and Adequacy of Notice Program ("Azari Decl.") from Epiq regarding the Notice Plan and Claims Administration.

32. As the Azari Declaration sets forth, as of August 22, 2024, Epiq delivered 215,361 Notices to the Settlement Class. In response to these Notices,

Epiq has received 841 Claim Forms. The deadline for filing claims is September 17, 2024.

33. The deadline for Settlement Class Members to object to the Settlement or request exclusion from the Settlement Class is September 11, 2024. As of August 22, 2024, Epiq has received three requests for exclusion and zero objections.

34. On May 31, 2024, as required by 28 U.S.C. § 1715(b), AFR/Epiq also served notice of the proposed Settlement on the appropriate officials pursuant to the Class Action Fairness Act.

ATTORNEYS' FEES AND EXPENSES

35. Counsel for the Plaintiffs have decades of experience litigating class actions, including extensive efforts prosecuting data breach cases. From the outset, Plaintiffs' counsel understood they were undertaking complex, expensive, and potentially lengthy litigation. Counsel did so at the significant risk of no recovery, and many declined other business opportunities because of the time and expense this case demanded.

36. In undertaking this risk, Plaintiffs' counsel were obligated to, and did, ensure that sufficient resources were dedicated to prosecuting this matter. Both before and throughout this Litigation, Plaintiffs' counsel have conducted a full and thorough investigation of the claims at issue.

37. Plaintiffs' counsel combined invested 3,686.40 hours of attorney and support staff time over the course of two years, and incurred \$29,052.98 in expenses prosecuting this case for the benefit of the Settlement Class, without promise of payment of attorneys' fees or expenses if Plaintiffs did not prevail on their claims.

38. Co-Lead Counsel will continue to perform legal work on behalf of the Settlement Class should the Court finally approve the Settlement. Additional resources will be expended assisting Settlement Class Members with their Claim Forms and related inquiries and working with Epiq to ensure the smooth progression of claims processing.

39. Counsel spent this time and money on a contingency basis, all the time bearing the risk of never being compensated for their efforts or reimbursed for what they spent on behalf of the Settlement Class.

40. Class Counsel respectfully request attorneys' fees in the amount of \$825,000, representing 33% of the Common Fund, plus interest, and expenses in the amount of \$29,052.98.

41. Under current billing rates, Class Counsel's lodestar is \$2,409,106.30, meaning they will realize a negative multiplier of 0.34.

42. Annexed hereto as Exhibit B is the Declaration of Robbins Geller Rudman & Dowd LLP regarding its attorneys' fees and expenses.

43. Annexed hereto as Exhibit C is the Declaration of Kantrowitz, Goldhamer & Graifman, P.C. regarding its attorneys' fees and expenses.

44. Annexed hereto as Exhibit D is the Declaration of The Lyon Firm regarding its attorneys' fees and expenses.

45. Annexed hereto as Exhibit E is the Declaration of Markovits, Stock & DeMarco, LLC regarding its attorneys' fees and expenses.

46. Annexed hereto as Exhibit F is the Declaration of Milberg Coleman Bryson Phillips Grossman, PLLC regarding its attorneys' fees and expenses.

MY FIRM'S TIME AND EXPENSES

47. The information in this declaration regarding my Firm's time and expenses is taken from time and expense reports and supporting documentation prepared and/or maintained by the Firm in the ordinary course of business. I am the partner who oversaw and conducted the day-to-day activities in the Litigation and I reviewed these reports (and backup documentation where necessary or appropriate) in connection with the preparation of this declaration. The purpose of this review was to confirm both the accuracy of the entries as well as the necessity for, and reasonableness of, the time and expenses committed to the Litigation. As a result of this review, reductions were made to both time and expenses in the exercise of billing judgment. Based on this review and the adjustments made, I believe that the time reflected in the Firm's lodestar calculation and the expenses for which payment is

sought herein are reasonable and were necessary for the effective and efficient prosecution and resolution of the Litigation.

48. After the reductions referred to above, the number of hours spent on the Litigation by my Firm is 496.10. A breakdown of the lodestar is provided in Exhibit G. The lodestar amount for attorney/paraprofessional time based on the Firm's current rates is \$428,175.00. The hourly rates shown in Exhibit G are consistent with hourly rates submitted by the Firm in other data breach class action litigation. The Firm's rates are set based on periodic analysis of rates charged by firms performing comparable work both on the plaintiff and defense side. For personnel who are no longer employed by the Firm, the "current rate" used for the lodestar calculation is based upon the rate for that person in his or her final year of employment with the Firm.

49. My Firm seeks an award of \$4,595.96 in expenses and charges in connection with the prosecution of the Litigation. Those expenses and charges are summarized by category in Exhibit H.

The following is additional information regarding certain of these expenses:

- (a) Filing, Witness and Other Fees: \$469.60. These expenses have been paid to the Court for filing fees or to a process server. The vendors who were paid for these services are set forth in Exhibit I.
- (b) Litigation Expense Fund Contributions: \$4,126.36. My Firm contributed to a Litigation Expense Fund maintained by Robbins Geller Rudman & Dowd LLP to pay certain common expenses related to the Litigation.

The expenses pertaining to this case are reflected in the books and records of this Firm. These books and records are prepared from receipts, expense vouchers, check records, and other documents and are an accurate record of the expenses.

50. My Firm's resume is attached hereto as Exhibit J.

THE EFFORTS OF NAMED PLAINTIFFS

51. In addition to the work performed by Class Counsel, Plaintiffs Dora Micah, Sharon Styles, Matthew Stuart, and Anthony A. Olivia, Ph.D. were each directly involved in activities related to representing the Settlement Class. Such activities included: (a) consulting with counsel regarding the Litigation and the Court's orders; (b) reviewing and commenting upon pleadings, motions, and briefs; (c) reviewing correspondence and status reports from counsel; (d) responding to discovery requests and collecting documents for production, including electronically stored information from their personal emails; (e) conferring with counsel concerning litigation strategy; and (f) monitoring settlement negotiations.

I hereby declare under penalty of perjury that the foregoing statements are true and correct.

/s/ James E. Cecchi
JAMES E. CECCHI

Dated: August 27, 2024