

DAVID M. LANDAY,

Representative Plaintiff,

v.

DATAVANT LLC, formerly known as
Health Port Technologies LLC,

Defendant.

CIVIL DIVISION
CLASS ACTION

GD-09-012923

**SUPPLEMENTAL DECLARATION
OF JAMES M. PIETZ IN SUPPORT
OF THE MOTION FOR APPROVAL
OF ATTORNEYS' FEES, COSTS
AND CLASS REPRESENTATIVE
SERVICE AWARD**

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***Attorneys for Representative
Plaintiff and the Putative Classes***

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA**

DAVID M. LANDAY, CIVIL DIVISION

Representative Plaintiff, CLASS ACTION

v. No. GD-09-012923

DATAVANT, LLC formerly known as
Health Port Technologies LLC,

Defendant.

**SUPPLEMENTAL DECLARATION OF JAMES M. PIETZ, ESQ. IN
SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS
AND CLASS REPRESENTATIVE AWARD**

Pursuant to 28 U.S.C. § 1746, I, James M. Pietz, hereby declare as follows:

1. I submit this Supplemental Declaration in Support of Plaintiffs' Motion For Approval of Attorneys' Fees, Costs and Class Representative Service Award.

2. This declaration supplements my previous Declaration In Support of Preliminary Approval of Class Action Settlement wherein I set forth my background and experience in class action and consumer protection litigation and a history of this litigation based upon my personal experience in litigating this class action matter in this Court, the federal court in Pittsburgh and the Pennsylvania appellate courts. This declaration again sets forth the history of this litigation and further describes

the attorney time and costs expended by Plaintiffs' Counsel in prosecuting this matter. This declaration further sets forth my personal knowledge of David Landay's work and efforts in his role as the representative plaintiff.

II. History of the Course Of Proceedings In This Matter

3. I have been one of Plaintiff's Co-Counsel in this matter since its inception. I was personally involved in and have personal knowledge of the litigation of this matter at every stage of the case, including in the Allegheny County Common Pleas Court, the Federal District Court in Pittsburgh, the Pennsylvania Superior Court, and the Pennsylvania Supreme Court. Set forth below is a history of the course of proceedings in this matter in which I was personally involved in prosecuting this class action for Class Plaintiffs.

History of the Litigation

4. This class action was initially assigned to the Commerce and Complex Center of the Court of Common Pleas of Allegheny County ("Trial Court") with other related case.¹ By order of the Trial Court, (ret. Wettick, J.), these related cases

¹ The remaining pending cases are: *David M. Landay vs. UPMC Presbyterian Shadyside*, GD-09-012919; *David M. Landay vs. IOD*, GD-09-012922; and *David M. Landay vs. UPMC Magee-Womens Hospital*, GD-09-014785. The case of *David A. Neely v. MRO Corporation*, GD-09-012911 (formerly *Wayne M. Chiurazzi Law Inc. v. MRO Corporation*) was the subject of a class action settlement in 2018 and is no longer pending. The case of *Chiurazzi Law, Inc. v. Duplications, Inc.* GD-10-004369 was voluntarily discontinued. Since the entry of this order, the case captions have changed because Mr. Landay has been substituted as the class representative in several of the cases.

(“Coordinated Actions”) were coordinated for pre-trial management. Exhibit 1, Order of Coordination.² Each of the Coordinated Actions arise from the same wrong, namely, the failure of various medical record reproduction companies (“MRRCs) or health care providers to comply with the 1998 version of the Pennsylvania Medical Records Act, 42 Pa.C.S.A. § 6152 (“MRA”). The 1998 version of the MRA, which was amended in 2012 during these actions, is attached hereto as Exhibit 2.

A. The Initial Complaint’s Allegations

5. The initial Complaint in this case was filed on July 15, 2009. Exhibit 3. The Representative Plaintiffs, at the time, included a lawyer who, on behalf of a client, requested medical records from a health care provider and a person who requested medical records from a healthcare provider. Defendant HealthPort³, at the time was a MRRC, and, as such, specialized in responding – as the health care provider’s agent – to medical records requests directed by patients to their health care providers.

² Exhibits referenced herein are contained in Plaintiff’s prior separate Appendix in Support of the Motion To For Preliminary Approval.

³ At the time the initial Complaint was filed, the named Defendant was HealthPort Technologies, Inc. However, in later stages of the proceedings, Ciox Health, LLC was substituted as the named Defendant and then thereafter Datavant, LLC was substituted. The use of the term HealthPort refers to the named Defendant for the period of time before the substitution of Ciox and then Datavant.

6. The Complaint alleged that the 1998 version of the Pennsylvania Medical Records Act (“MRA”) provided that patients are entitled to obtain their medical records in return for payment of a fee based upon the MRRC’s or health care provider’s estimated actual and reasonable costs incurred in retrieving and reproducing the desired records. Exhibit 3 at ¶¶ 2, 8-11.

7. The Complaint alleged that HealthPort violated the MRA in two material respects: *First*, the Complaint alleges that the MRA required MRRCs such as HealthPort to establish procedures to identify and disclose to medical records requestors the estimated actual and reasonable cost of retrieving, reproducing and transmitting requested medical records. Exhibit 3 at ¶ 11. The Complaint alleged that HealthPort did not have a procedure to identify and disclose its actual or reasonable medical records reproduction costs to Representative Plaintiffs or other similarly situated persons. Exhibit 3 at ¶ 23-24.

8. *Second*, the Complaint alleged that the 1998 MRA only permitted MRRCs to charge and collect a fee based upon the “estimated actual and reasonable cost” of reproduction and transmission, unless such costs were greater than certain statutory maximums set out in the MRA. Exhibit 3 at ¶ 10-11. The Complaint alleges that HealthPort did not disclose the estimated costs in responding to medical record copy requests as required by § 6152(a)(1) of the MRA, but instead, HealthPort automatically charged the maximum fees set forth in § 6152(a)(2)(i) for search and retrieval and for making photocopies of paper records, when in fact its estimated

actual and reasonable expenses were far less than the statutory maximum fee. Exhibit 3 at ¶ 21. In other words, the Complaint alleged that HealthPort ignored its statutory duties by failing to disclose its estimated actual and reasonable cost of reproduction, and by failing to provide the requested medical records in exchange for payment of that amount. Exhibit 3 at ¶ 23-26.

9. Based on these allegations, the Complaint against HealthPort asserted five causes of action: (1) implied breach of contract; (2) restitution; (3) constructive trust; (4) unjust enrichment and (5) declaratory relief. Exhibit 3 at ¶ 55-83.

B. Defendant's Failed Removal And Preliminary Objections

10. On August 20, 2009, HealthPort removed this action to federal court. Allegheny County Court of Common Pleas Docket, Doc. # 4. (hereinafter Docket #___) On February 18, 2020, the federal court ordered remand of the action. Docket, Docket # 5. On March 30, 2010, HealthPort filed preliminary objections. Exhibit 4. HealthPort argued that it was permitted by law to automatically charge the maximum amounts set forth in the second sentence of § 6152(a)(2)(i) of the 1998 MRA without regard to its “estimated actual and reasonable costs” for the following reasons: 1) HealthPort is an MRRC, not a “health care provider or facility” and is therefore not covered by the MRA. Exhibit 4 at p. 2-3, ¶ 5; 2) Plaintiffs did not allege an implied or express contract; Exhibit 4 at p. 3, ¶ 5; 3) HealthPort obtained “prior approval” to charge rates in excess of any alleged statutory maximum rate; Exhibit 4 at p. 1, ¶ 6-9; and 4) HealthPort charged rates that the MRA provides are “per se”

reasonable; Exhibit 4 at p. 4, ¶ 10, 5) Representative Plaintiff's equity-based claims – Count II (Restitution), Count III (Constructive Trust) and Count IV (Unjust Enrichment) – failed to state a claim because HealthPort complied with the MRA. Exhibit 4 at p. 1, ¶¶ 12-14; and 6) Plaintiff's claims were barred by the based on the doctrine of “voluntary payment”. Exhibit 4 at ¶¶ 17-18.

11. By the time HealthPort filed its Preliminary Objections, the Trial Court (Wettick, J.) had already addressed certain of the preliminary objections since they had been raised by the other defendants in the Coordinated Actions. The Trial Court over-ruled most of HealthPort's primary preliminary objections. The Trial Court's rulings are addressed below.

12. In a Memorandum and Order dated February 4, 2010, the Trial Court rejected the argument that the 1998 MRA permitted MRRCs and health care providers to automatically charge the maximum amounts set forth in the second sentence of § 6152(a)(2)(i) of the MRA without regard to their “estimated actual and reasonable costs”. Exhibit 5.⁴ The Trial Court also overruled the preliminary objections based upon “prior approval” and “voluntary payment”, holding that the applicability of these affirmative defenses could not be decided at the preliminary

⁴ Representative Plaintiff agreed to the dismissal of the Complaint's equity-based claims (Counts 2-4) in light of the intervening decision in *Liss & Marion, P.C. v. Recordex Acquisition Corp.*, 603 Pa. 198, 983 A.2d 652 which held that an MRA violation gives rise to a claim for breach of contract. Exhibit 7, Mem. Op. at p.3, fn. 2. Thus, Plaintiff acquiesced to HealthPort's preliminary objection that equity does not apply where there exists an adequate remedy at law. Exhibit 8 at p. 4-5.

objections stage. Exhibit 5. On June 17, 2010, the Trial Court over-ruled HealthPort's Preliminary Objections by expressly applying the February 10th ruling in the Coordinated Actions to HealthPort. Exhibit 6.

C. The Interlocutory Appeal

13. Following the Trial Court's February 4, 2010 ruling on preliminary objections, a defendant in the Coordinated Actions asked the Trial Court to certify for interlocutory appeal the question of whether the MRA limits medical records reproduction charges to the "estimated actual and reasonable costs" incurred. In a Memorandum and Order dated June 17, 2010, the Trial Court agreed to certify this issue for interlocutory appeal in one of the cases in the Coordinated Actions, namely, *David A. Neely v. MRO Corporation*, GD-09-012911 (formerly *Wayne M. Chiurazzi Law Inc. v. MRO Corporation*), while ordering that the remaining cases in the Coordinated Actions were to continue in litigation before the Trial Court. Exhibit 7.

14. In light of the above, the Trial Court entered the following order in the *MRO* action only:

On this 17th day of June, 2010, upon consideration of defendant's preliminary objections seeking dismissal of plaintiff's Second Amended Complaint *on the ground that plaintiff were not charged any amount for the production of medical records that exceeded the amounts set forth in the second sentence of 42 Pa.C.S. § 6152(a)(2)(i), as adjusted*, it is hereby ORDERED that these preliminary objections are overruled based upon my construction of the relevant provisions of the Medical Records Act as not allowing charges that exceed actual and reasonable expenses.

I am of the opinion that this order of court overruling defendant's preliminary objections involves a controlling question of law as to which

there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter.

Exhibit 7 at p. 13-14 of 15. (emphasis added).

15. MRO, one of the defendants in the Coordinated Actions, took an interlocutory appeal from the Trial Court's June 17, 2010 Memorandum and Order, and, as noted above, on August 18, 2010, the Superior Court agreed to hear the interlocutory appeal. Thereafter, HealthPort likewise filed an application seeking interlocutory appeal which was denied by the Trial Court. Docket # 14.

D. The Trial Court's March 2, 2011 Memorandum Overruling Defendant's Motion For Judgment On The Pleadings

16. While the *MRO* test case was working its way through the appeal process in the Superior Court, proceedings in the on-going Coordinated Actions continued in the Trial Court. On July 19, 2010, HealthPort filed an Answer/New Matter in which it denied that it was required to disclose and to then charge for medical records based upon its actual and reasonable costs of production. Exhibit 8 at ¶¶ 21-26. HealthPort asserted that in its dealings with Representative Plaintiff and the putative class, it fully complied with the medical records reproduction charging regime established by the 1998 MRA. Exhibit 8 at ¶¶ 24-26.

17. On October 10, 2010, the Trial Court entered a scheduling order allowing Defendants in the remaining Coordinated Actions to assert motions for judgment on the pleadings. Exhibit 9.

18. On October 15, 2010, HealthPort filed a motion for judgment on the pleadings in which it argued that the Complaint should be dismissed under the common law “voluntary payment” doctrine, under the “prior approval” provision of the MRA and because the Complaint did not sufficiently allege a contract between Plaintiff and HealthPort. Exhibit 10 HealthPort Brief In Support at pp. 7-16.

19. On March 2, 2011, the Trial Court entered a Memorandum and Order overruling the motions for judgment on the pleadings filed by Defendants in the remaining Coordinated Actions. Exhibit 11. With respect to the “prior approval” provision of the MRA⁵, the Trial Court stated as follows: “Because the factual allegations in plaintiff’s complaint do not establish that plaintiff agreed to make payments in excess of those permitted in § 6152(a)(2)(i), I am denying the motion for judgment on the pleadings based upon prior approval.” Exhibit 11 at p. 5-6. With respect to the common law doctrine of “voluntary payment”, the Trial Court concluded that this defense presented issues of fact which could not be resolved via a judgment on the pleadings. Exhibit 11 at p. 6-8. With respect to whether the Complaint sufficiently alleged an implied contract, the Trial Court found that the complaint alleged an implied contract on the same a basis as found by the Supreme Court in the

⁵ Section 6152(a)(2)(i) of the 1998 MRA provides as follows: “No other charges for the retrieval, copying and shipping or delivery of medical records other than those set forth in this paragraph shall be permitted *without prior approval* of the party requesting the copying of the medical records.” 42 Pa. C.S. § 6152(a)(2)(i).

Liss & Marion case. Exhibit 11 at p. 6. The Trial Court applied this ruling to HealthPort. Docket. # 21.

E. The Divided Superior Court Decision

20. On August 11, 2011, a divided Superior Court reversed the Trial Court and held that the 1998 MRA does not limit MRRCs and health care providers to their “estimated actual and reasonable cost” of reproducing requested medical records. *Wayne M. Chiurazzi Law Inc. v. MRO Corp.*, 2011 PA Super 169, 27 A.3d 1272, 1280 (2011), *rev'd*, 626 Pa. 303, 97 A.3d 275 (2014). Exhibit 12. The Superior Court ruled that the rates specified in the MRA, specifically, in the second sentence of 42 Pa.C.S. § 6152(a)(2)(i), constitute “safe harbor rates”, i.e., rates that may be charged in all instances, regardless of the estimated actual and reasonable costs incurred in reproducing requested records. *Id.*

21. The Superior Court rested this interpretation of the 1998 MRA on a single sentence found in the Supreme Court’s *Liss & Marion* opinion: “[W]e turn to the question of whether Appellants breached the parties’ contract by charging rate M (copies from microfilm) rather than rate D (copies from all other media other than microfilm) for copies from electronic records.” *Liss*, 603 Pa. at 215; 983 A.2d at 662.” 27 A.3d at 1280.

22. The Superior Court reasoned that because the Supreme Court used the term “rate” in this sentence rather than the term “price caps”, the second sentence of § 6152(a)(2)(i) of the MRA must be read as identifying “billing rates” and not “price

caps”. *Id.* Based on this reasoning, the Superior Court majority concluded that the MRA created “safe harbor rates”, i.e., rates that could be charged in all instances regardless of the actual and reasonable expenses incurred in reproducing requested records. According to the Superior Court majority, this interpretation of the MRA was mandated by the Supreme Court’s decision and stated rationale in *Liss & Marion*. *Id.*⁶

F. The General Assembly’s Amendment Of The MRA After the Supreme Court Allows Plaintiff’s Appeal

23. Following the Superior Court’s decision, the Plaintiffs filed a Petition for Allowance of Appeal in the Pennsylvania Supreme Court. *Chiurazzi Law, Inc. v. MRO Corp.*, 614 Pa. 572, 39 A.3d 267 (2012). On February 22, 2012, review was granted on the questions that the Court found to present pure issues of law.

24. Soon thereafter, on May 29, 2012, Senate Bill 1535 was introduced in the General Assembly. Ultimately, the MRA was amended by Act No. 2012-139 which was signed into law by Governor Corbett on July 5, 2012. A copy of Act No. 2012-139 is attached hereto as Exhibit 13. The new law eliminated the right of medical records requesters to obtain copies of medical records based on the estimated

6 Additionally, the Superior Court held the “safe harbor” rates set forth in the MRA did not apply to medical records reproduced in electronic form, only to medical records reproduced in paper form. With respect to claims arising out of charges for medical records reproduced in electronic format, the Superior Court held that the reproduction charges at issue would be permitted by operation of the “voluntary payment” doctrine as well as the “prior approval” provision set forth in § 6152(a)(2)(i) of the MRA. *Id.* at 1281.

actual and reasonable cost of reproducing the records. Under this new 2012 version of the MRA – the version that continues in force to this day – MRRCs may charge the MRA’s statutory maximum amounts without regard to their estimated actual and reasonable expenses incurred in reproducing the records.

25. On July 12, 2012, Appellee MRO filed Act 2012-139 as supplemental authority with the Supreme Court and requested that the Court summarily affirm the Superior Court decision, or alternatively, to dismiss the appeal as improvidently granted. See Appendix, Exhibit 14. MRO argued that Act No. 2012-139 “clarified” the MRA consistent with the opinion of the Superior Court and, therefore, argued that Plaintiff’s appeal was moot. Exhibit 14.

26. Plaintiffs opposed MRO’s request by filing a Response To the Motion To Summarily Affirm. Exhibit 15. Plaintiffs asserted that MRO’s motion was based upon an erroneous premise: that Act No. 2012-139 constituted a retroactive clarification of a patient’s rights under §§ 6152(a)(1) and 6152(a)(2)(i) of the Medical Records Act. 42 P.S. §§ 6152(a)(1) and 6152(a)(2)(i). Exhibit 15. Plaintiffs, argued that, to the contrary, the amendment constitutes an extensive change to the substantive rights of patients’ rights under the MRA that operated prospectively only. Exhibit 15. Accordingly, as Plaintiff argued, Act No. 2012-139 did not provide the determination of the issues presented in the appeal.

27. On August 24, 2012, the Supreme Court denied the motion to summarily affirm or dismiss the appeal as improvidently granted. Ex. 16.

G. The Pennsylvania Supreme Court Decision

28. On February 22, 2012, the Pennsylvania Supreme Court accepted the case for review. *Wayne M. Chiurazzi Law, Inc. v. MRO Corp.*, 614 Pa. 572, 39 A.3d 267 (2012). In granting review, the Supreme Court framed the issues as follows:

(1) Does the Medical Records Act, 42 Pa.C.S. § 6152(a)(1) and (a)(2)(i), require medical records reproducers to disclose their estimated actual and reasonable expenses of reproducing the charts or records, and to limit their copying charges to these amounts or the statutory ceiling rates, whichever is less?

(2) If so, where a medical records reproducer failed to disclose and charge its estimated actual and reasonable expenses and instead charges the MRA's ceiling rates, do the "voluntary payment" and "prior approval" defenses bar the records requestor from bringing a subsequent breach of contract claim to recoup the unlawful over-payment?

614 Pa. 572, 39 A.3d 267.

29. On the merits of the appeal, in answering the first question presented, the Supreme Court rejected the Superior Court's interpretation of the 1998 MRA and embraced the Trial Court's:

In our view, the plain and unambiguous language of the Act—read in a way to avoid surplusage and to give effect to all provisions—fully supports the construction employed by the trial judge and the Superior Court dissent, and elaborated upon by appellants here. Having already summarized the competing views at length, we merely stress the following factors, evident in the language and structure of the MRA, that convince us *that this legislative scheme establishes that the expenses chargeable for medical records are the reproducer's actual and reasonable expenses, but subject to a statutory cap.*

626 Pa. at 335. (emphasis added). Ex. 17

30. The Supreme Court noted that the 1998 MRA imposed two duties on records producers:

The first duty, in Section 6152(a)(1), is to disclose the estimated actual and reasonable expenses of reproducing the medical records to the requestor. The second duty, imposed by Section 6152(a)(2)(i), is to limit the charges to the estimated actual and reasonable expenses or the statutory pricing schedule limit, whichever is less.

626 Pa. 303, 321, 97 A.3d 275, 285 (2014). Exhibit 17.

31. As to the second question on which the Supreme Court granted review, although fully briefed by the Parties and addressed by the Superior Court, the Supreme Court refused to reach the issues of “voluntary payment” and “prior approval”, leaving these “legal issues” to be resolved on remand. *Id.* at 338. Exhibit 17.

32. Thus, the Court reversed the Superior Court’s decision in the *Wayne M. Chiurazzi Law Inc. v. MRO Corp.* case. *See Wayne M. Chiurazzi Law Inc. v. MRO Corp.*, 626 Pa. 303, 97 A.3d 275 (2014). Exhibit 17.

H. The Amended Complaints Substituting Plaintiffs and Defendant’s Corresponding Answer and New Matter

33. After remand, on May 14, 2015, Plaintiff requested leave to remove Charlotte Hagans as Representative Plaintiff in this case. This request was granted on June 16, 2015, and on that same date the First Amended Complaint (“FAC”) was filed evidencing this change. Doc. #29. On February 24, 2020, with the consent of HealthPort, Plaintiff filed a Second Amended Complaint (“SAC”) substituting David

M. Landay as the Representative Plaintiff to replace Anthony C. Mengine Law Inc. D/B/A Chiurazzi & Mengine, LLC. Exhibit 18.

34. On March 16, 2020, HealthPort filed its Answer and New Matter to the SAC. Exhibit 19. The HealthPort New Matter asserts certain affirmative defenses, including the following:

No. 7. Plaintiff's claims are barred in whole or in part because HealthPort complied with any duty it had under the MRA by obtaining "prior approval" from the Plaintiff for the fees that it charged pursuant to § 6152(a)(2)(i).

No. 8. Plaintiff had knowledge (and/or means of knowledge) of all relevant facts, including facts relating to the fees, and he voluntarily paid them.

No. 9. Plaintiff's claims are barred by the voluntary payment doctrine.

No. 10 Plaintiff's claims are barred by the doctrine of accord and satisfaction.

No. 11 Plaintiff's claims are barred by the doctrines of estoppel, waiver, truth, consent, failure of consideration and res judicata.

No. 12 All equitable defenses, including, but not limited to, the defense of "unclean hands" are asserted.

Exhibit 19, at p. 14, New Matter.

I. The Parties' Motions For Judgment On The Pleadings

35. After the close of pleadings, on June 16, 2021 Plaintiffs filed a Motion To Strike Affirmative Defenses and For Judgment on the Pleadings seeking to have the court strike Defendant's affirmative defenses based upon voluntary payment and prior approval.

36. Soon thereafter, a number of attorneys from the law firm of Kirkland & Ellis filed motions for *pro hac vice* which were granted by the court.

37. Defendant thereafter filed its own Motion For Judgment on the Pleadings seeking to have the FAC dismissed based upon the defenses of voluntary payment and prior approval.

38. On August 6, 2021, the Court entered an order setting a briefing schedule on the competing motions.

39. Thereafter, the Parties submitted various briefs in support of their motions and in opposition.

40. On August 8, 2022, the Court (Ignelzi, J.) overruled each of the motions for judgement on the pleadings.

J. The Discovery Proceedings

41. On March 20, 2022, the Court (Ignelzi, J) entered a scheduling order setting deadlines for conducting discovery, expert discovery and class certification proceedings.

42. The Parties engaged in extensive discovery proceedings. Fact and Class discovery in this matter had opened on September 29, 2022. Plaintiff propounded discovery in November of 2023. Defendant HealthPort claimed it needed time to make searches for information. It took until December 1, 2023, for HealthPort to confirm it would no longer voluntarily amend its discovery responses, confirm it completed its

search for information responsive to the discovery requests, or produce any more documents.

43. Additional discovery directed to HealthPort's existence and any entities it acquired or merged with then resulted in admissions by HealthPort that it merged with IOD Incorporated and changed names between December 31, 2015 and February 19, 2016. This raised plaintiff's concerns as the adequacy of the parties, the ability to enforce discovery against non-existent entities, and the efficacy of any later obtained judgment.

44. On January 17, 2024, plaintiff filed a motion to strike HealthPort's Answer for lack of a proper verification. The motion was set for hearing on February 28, 2024, at the same time a status conference hearing on the coordinated cases. Ciox Health LLC (Ciox) then began to become directly involved in this matter. Ciox filed a voluntary substitution as a party defendant on February 22, 2024, becoming a party to the litigation.

45. The Court thereafter heard Plaintiff's motions to compel further response to Interrogatories and Production Demands from Ciox in July and August of 2024 and granted such motions. Ciox's responses suggest to Plaintiffs that the further interrogatory and production responses made after the Court's Order were not full, complete, and accurate. Nonetheless, Plaintiff has refrained from further enforcement actions pending resolution of mediation.

K. The Mediation Proceedings

46. In September 2024, Ciox decided to change its defense counsel. Attorney Leland Schermer of the law firm of Marcus & Shapiro filed appearances on behalf of Ciox in both cases on September 25, 2024. Ciox previously employed teams of attorneys from two internationally known law firms. One of Ciox's prior counsel, K & L Gates withdrew all its attorneys as defense counsel on the same date that Mr. Schermer appeared. Thereafter, Ciox's other prior counsel, Kirkland & Ellis, LLP withdrew its attorneys as defense counsel on May 5, 2025.

47. After his appearance in the case, Mr. Schermer met and conferred with Plaintiffs' Counsel on moving the cases forward. Mr. Schermer proposed, and Plaintiffs' Counsel agreed, to conduct mediation before (ret.) Magistrate Judge Lisa Pupo Lenihan. Accordingly, the Parties appeared before the Court on February 11, 2025 for a Status Conference and informed the Court of the Parties agreement to conduct mediation.

48. To proceed with the mediations, the Parties started with the *Landay v. Datavant (HealthPort)* case pending at GD-09—12922.⁷ This process was two-fold. *First*, Datavant produced a spreadsheet with hundreds of thousands of entries of potential class members in the *Datavant(HealthPort)* matter. The Parties then engaged in discussions to understand the data in the spreadsheet and identify those persons or entities identified on the spreadsheets who would have claims under the

⁷ Datavant LLC. was also substituted as the Defendant for Ciox.

Pennsylvania Medical Records Act as asserted in the Second Amended Class Action Complaint. Once this initial process of identifying potential class members and the Parties identification of non-members and persons whose status as members or non-members was concluded, the Parties proceeded with a scheduled mediation with Judge Lenihan.

49. Mediation was conducted on the following dates: March 19, 2025; May 5, 2025 (mediation of class relief) and July 10, 2025 (mediation of attorneys' fees). Thus, the Parties reached a tentative agreement in *Datavant(HealthPort)* action by the end of July 2025.

Attorney Time Spent on The Litigation

50. I was personally involved in all phases of the litigation that led to the proposed settlement. Given the complex, multi-jurisdictional nature of this litigation and the myriad of defenses raised by defendants, extensive attorney time was necessarily expended. My time records which I have kept in the regular course of my work from 2009 to the present indicate attorney time was expended on at least eleven (11) different phases of litigation as to the following matters that affected all coordinated actions:

Phase 1	• Draft and research class action complaints involving novel questions of class representative standing and applicable causes of action;
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Phase 2	Respond to defendants' over length preliminary objections briefing in each of the coordinated actions;
Phase 3	- Respond to defendant's HealthPort's Notice of Removal and motion to dismiss in federal court; - Prepare motion and brief in support of motion to remand in the HealthPort action; - Respond to HealthPort's preliminary objections
Phase 4	Respond to defendant MRO's request for interlocutory appeal in the Superior Court;
Phase 5	Respond to defendants' motion for judgment on the pleadings in each of the coordinated cases in the trial court while the MRO case was on appeal;
Phase 6	Appellate proceedings in Superior Court against MRO and <i>amicus curiae</i>;
Phase 7	- Research and draft Petition for Allowance of Appeal to Pa. Supreme Court in MRO case; - Respond to defendant's MRO motion to dismiss appeal in Supreme Court after revision to Medical Records Act; - Appellate proceedings in Pennsylvania Supreme Court in the MRO case and <i>amicus curiae</i>;

Phase 8	• Draft Motion and Brief In Support of Motion For Partial Summary Judgment for the coordinated cases; • Draft Amended Class Action Complaints in the coordinated cases; • Respond to and Prepare Briefs Re: second round of motions for judgment on the pleadings in the coordinated cases;
Phase 9	• Engage in drafting and responding to discovery; meet and confer letters and meetings; drafting multiple motions to compel in the IOD and HealthPort cases; • Engage in private investigations of information produced in discovery and of witnesses to the information disclosed. • Prepare and file Motions to expose the non-existence of the defendants resulting in Ciox substituting into this action as successor in interest after Ciox's refusal to substitute parties.
Phase 10	• Engage in mediation proceedings
Phase 11	• Negotiate and draft settlement agreement and class notice and notice plan

51. Taken together, Plaintiffs' Counsel has determined the total amount of hours of attorney time expended during this litigation in the coordinated proceedings. I have personally compiled the hours I have worked on these matters. The attorney time of other Plaintiffs' Counsel has been compiled by their respective firms and has been reported to me.

52. Under the reasoning of *Gulfstream III Assocs., Inc. v. Gulfstream Aerospace Corp.*, 995 F.2d 414, 420 (3d Cir. 1993) Plaintiffs' Counsel have allocated hours to this matter as follows:

James M. Pietz, Esq	1775.05
Paul Lagnese, Esq. David Paul, Esq. Of Berger, Lagnese & Paul	800
John Worgul, Esq. Joseph N. Kravec Jr., Esq. Wyatt Lison, Esq. Of Feinstein Doyle Payne & Kravec, LLC	790
Total	3365.05

53. Plaintiffs' Counsel have expended costs during the litigation against Defendant and have likewise allocated the costs to this matter. These costs relate to

filing fees, copying charges, expert fees, mediation costs or similar costs related amounts which are typically recoverable. *Montenegro v. Laumont Photographics, Inc.*, No. 20 CV 4443 (DG) (CLP), 2022 U.S. Dist. LEXIS 247278, 2022 WL 21795492, at *4 (E.D.N.Y. Apr. 14, 2022) ("[C]ourts often award costs that are 'incidental and necessary to [plaintiff's] representation' and the filing fee, cost of service, and mediation fees certainly qualify as necessary aspects of this litigation.") These costs have been allocated as follows:

Pietz Law Office, LLC	\$6350
Berger Lagnese & Paul	\$2897.96
Feinstein Doyle Payne & Kravec, LLC.	\$24,921.46
Total	\$34,169.42

Representative David Landay

54. I personally consulted and worked with David Landay in the prosecution of this class action. Mr. Landay was significantly involved as the representative plaintiff. Mr. Landay was inquisitive of and stayed informed of the progress of the action. He attended important hearings and mediation sessions. He took time out of his work as a trial attorney to work closely with counsel in responding to discovery requests and in reviewing his client files to search for and produce responsive documents. He estimates he has spent 115 hours in working on the coordinated

litigation. This time represents uncompensated time that could have expended in his work as a trial attorney. His work on the case was steadfast and persistent despite the duration of the litigation. He has not personally benefited from the litigation except as to settlement benefits made available by him.

55. In my opinion, this class action would not have been successful but for his efforts and commitment in pursuing the litigation. In my opinion, Mr. Landay's efforts furthered the public policies underpinning the MRA and resulted in significant settlement benefits for the Plaintiff Class.

I declare under penalty of perjury that the foregoing is true and accurate.

Executed this 1st Day of September, 2026, in Pittsburgh, Pennsylvania.

By /James M. Pietz
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon counsel of record by Electronic Mail this 1st Day of September, 2026 addressed as follows:

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